

ENTERED

FORM 27
[RULES 6.3 AND 10.52(1)]

COURT FILE NUMBER B201-719774
25-2719774

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

MATTER IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, c B-3, AS AMENDED, OF GS E&R CANADA INC.

APPLICANT GS E&R CANADA INC.

DOCUMENT **APPLICATION FOR COURT APPROVAL OF PROPOSAL**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **STIKEMAN ELLIOTT LLP**

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File No.: 148767.1001

Counsel for the Applicant, GS E&R Canada Inc.



NOTICE TO RESPONDENTS

This application is made against you. You are a Respondent.

You have the right to state your side of this matter before the master/judge.

To do so, you must be in Court when the application is heard as shown below:

Date: September 17, 2021
Time: 2:00 PM
Where: Calgary, by WEBEX
Before Whom: Justice C. Jones

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. For the reasons further described herein, GS E&R Canada Inc. (the “**Debtor**” or “**E&R CANADA**”), with the support of MNP Ltd. (the “**Proposal Trustee**”), hereby seeks from this Court the issuance of an order, substantially in the form of the draft Order attached hereto as Schedule “A”, *inter alia*:
 - (a) abridging the time for delivery and deeming service of this Application to be good and sufficient;
 - (b) approving and sanctioning the Proposal, as defined herein, which was accepted by the requisite number and dollar value of the Debtor's Unsecured Creditors entitled to vote at the meeting of the Debtor's creditors (the “**Creditors**”) held on September 7, 2021 (the “**Meeting**”), pursuant to section 59 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “**BIA**”);
 - (c) abridging the 10-day notice period (the “**Notice**”) required under section 58(c) of the BIA for the Proposal Trustee to provide its report dated September 8, 2021 (the “**Fifth Report**”) of the Meeting to the Office of the Superintendent of Bankruptcy Canada (the “**OSB**”) following the Meeting;
 - (d) requesting the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or the United States to give effect to the said Order, to assist the Debtor, the Proposal Trustee and their agents in carrying out the terms of the Order; and
 - (e) such further and other relief as this Honourable Court may deem just.

Grounds for making this application:

I. Procedural Background

1. On March 11, 2021, E&R CANADA filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to subsection 50.4(1) of the BIA (the “**NOI Proceedings**”) and appointed MNP Ltd. as the Proposal Trustee.
2. On March 24, 2021, this Court pronounced an initial order (the “**Initial Order**”) which, *inter alia*, (i) extended the Stay Period until May 25, 2021 (the “**Stay Period**”) and (ii) authorized

E&R CANADA to engage in a sale investment solicitation process (“**SISP**”) assisted by Sayer Energy Advisors (“**Sayer**”) and the Proposal Trustee.

3. The Stay Period was extended by subsequent orders of this Court pronounced by Justice Dunlop on May 21, 2021 and Justice Ho on July 2, 2021.
4. Acting in accordance with the Court-authorized SISP, E&R CANADA negotiated and executed an Asset Purchase Agreement on July 30, 2021 (the “**APA**”) with Bench Creek Resources Ltd. (the “**Purchaser**”), an arm’s length party not related to E&R CANADA.
5. On August 16, 2021, the Honourable Justice Dunlop approved a Sale Approval and Vesting Order (the “**SAVO**”), *inter alia*:
 - (a) Approving the Transaction contemplated by the APA;
 - (b) Vesting all right, title and interest held by E&R CANADA in the Assets outlined in the APA in the Purchaser free and clear of any and all Claims, save for Permitted Encumbrances (each as defined in the SAVO);
 - (c) Approving the granting of expanded powers to the Proposal Trustee, to take effect upon the resignation of E&R CANADA’s directors and officers, as set out at paragraph 15 of the SAVO.
6. On August 17, 2021, the Debtor filed its Proposal with the OSB.
7. On August 17, 2021, the Proposal Trustee provided a package of documents to the Debtor’s Creditors, including:
 - (i) notice to Creditors of the Meeting to be held virtually in compliance with OSB directive 22R2;
 - (ii) a copy of the Proposal;
 - (iii) a copy of the Form 78 Statement of Affairs of E&R CANADA;
 - (iv) a list of Affected Creditors;
 - (v) a Form 31/36 Proof of Claim and Proxy Form;
 - (vi) a Form 37 Voting Letter; and

(vii) the preliminary Report of Trustee on the Proposal, which includes a summary of the steps in the NOI Proceedings to date and the Proposal.

8. On September 7, 2021, the Meeting was held virtually at which 4 votes were cast by Creditors, with 4 votes in favour of the Proposal representing over 50% in number and over two thirds in value of the Debtor's unsecured creditors present at the meeting in person or by way of voting letter.

II. The Proposal

9. E&R CANADA understands that the Proposal Trustee has determined that the recovery that the Debtor's Creditors would obtain if the Proposal was accepted and approved would be equivalent to what they would stand to receive in the context of a bankruptcy; however, the Proposal Trustee is of the view that the Proposal is advantageous to E&R CANADA's unsecured creditors as it provides for an efficient and timely resolution of their claims, and further, is expected to fully satisfy all claims of the unsecured creditors.

10. E&R CANADA believes that the Proposal is made in good faith, and the terms thereof are reasonable under the circumstances, are calculated to benefit the general body of the E&R CANADA's Creditors, and should therefore be approved by this Court.

Affidavit or other evidence to be used in support of this application:

11. The pleadings and materials filed in this Action;

12. The First Report of the Proposal Trustee, dated March 19, 2021;

13. The Second Report of the Proposal Trustee, dated May 14, 2021;

14. The Third Report of the Proposal Trustee, dated June 28, 2021;

15. The Fourth Report of the Proposal Trustee dated August 11, 2021;

16. The Fifth Report of the Proposal Trustee dated September 8, 2021; and

17. The Fifth Affidavit of Jungho Park, to be filed, and;

18. Such further and other materials as counsel may advise and as this Honourable Court may permit.

Applicable Acts and Regulations:

19. Rules 1.2, 1.3, 3.2(2)(d), 3.8, 11.27 and 13.5 of the *Alberta Rules of Court*, Alta Reg 124/2010; and
20. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.

Any Irregularity Complained of or Objection Relied on:

21. None.

How the Application is proposed to be heard or considered:

22. Via Webex.

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the Applicant and against all persons claiming under the Applicant. You will be bound by any order that the Court makes, or another order might be given or other proceedings taken which the Applicant is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the Applicant(s) a reasonable time before the application is to be heard or considered.

SCHEDULE "A"

PROPOSED FORM OF APPROVAL ORDER

COURT FILE NUMBER B201-719774
25-2719774

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

MATTER IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, c B-3, AS AMENDED, OF GS E&R CANADA INC.

APPLICANT GS E&R CANADA INC.

DOCUMENT **APPROVAL ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **STIKEMAN ELLIOTT LLP**
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Solicitor: Karen Fellowes, Q.C.
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Fax Number: (403) 266-9034
File No.: 148767.1001

Counsel for the Applicant, GS E&R Canada Inc.

DATE ON WHICH ORDER WAS PRONOUNCED: September 17, 2021

NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Justice Jones

LOCATION OF HEARING: Calgary, AB

UPON THE APPLICATION (the “**Approval Application**”) of GS E&R Canada Inc. (“**E&R CANADA**” or the “**Debtor**”) for an order approving its proposal to creditors filed August 17, 2021 (the “**Proposal**”);

AND UPON HAVING READ the previously filed Reports of MNP Ltd. (the “**Proposal Trustee**”), the Report of Trustee on the Proposal dated August 17, 2021, and the Report of Trustee on Proposal dated September __, 2021 (the “**Fifth Report**”);

Clerk's Stamp:

AND UPON HAVING READ the affidavit of Jungho Park, sworn September 9, 2021 (the "**Fifth Park Affidavit**");

AND UPON NOTING the affidavit of service of Stephanie Harrison, sworn September __, 2021;

AND UPON reading the Proposal filed with the Office of the Superintendent of Bankruptcy Canada (the "**OSB**") on August 17, 2021 (the "**Proposal**") and described to the general meeting of creditors held on September 7, 2021 (the "**Meeting**");

AND UPON being advised that the Proposal was accepted by the requisite majorities of the Debtor's creditors;

AND UPON being satisfied that the Proposal is made in good faith, and that its terms are reasonable and calculated to benefit the general body of creditors;

AND UPON HEARING from some or all counsel for the parties present at the hearing of the Approval Application;

AND UPON NOTING the provisions of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**");

IT IS HEREBY ORDERED THAT:

Service

1. With respect to service of the Approval Application and all accompanying materials, the dissemination of the Debtor's Proposal to its creditors (the "**Creditors**"), the service of notice of the Meeting, and all other matters of technical compliance under the BIA:
 - (a) service of notice of the Approval Application and all supporting materials is abridged and is hereby deemed to be good and sufficient;
 - (b) service of the Report of Trustee on Proposal dated September 8, 2021, providing the Proposal Trustee's report of the Meeting to the Office of the Superintendent of Bankruptcy Canada following the Meeting as required by section 58(c) of the BIA is abridged and is hereby deemed to be good and sufficient;
 - (c) the dissemination of the Proposal and all accompanying materials to the Debtor's Creditors has been duly effected;

- (d) proper notice of the Meeting was duly given to all Creditors entitled to vote at that Meeting;
- (e) the Meeting was duly convened and held in accordance with the provisions of the BIA; and
- (f) the distribution of the necessary materials for the Meeting is hereby deemed good and sufficient.

Approval of the Proposal

2. The Proposal is made in good faith and its terms are fair and reasonable and are calculated to benefit the general body of the Creditors.
3. The Proposal has been agreed to and approved by the requisite majorities of the Creditors as required by the BIA.
4. The Proposal attached hereto as **Schedule "A"** is hereby approved and sanctioned, is effective in accordance with its terms and is binding upon and enures to the benefit of the Debtor, the Debtor's Creditors, and all other Persons and parties named or referred to in, affected by, or subject to the Proposal, including their respective heirs, administrators, executors, legal representatives, successors and assigns, as provided in the Proposal, and in this Order.
5. Pursuant to and in accordance with the Proposal, all Proven Claims shall be final and binding on the Debtor and all Creditors, including without limitation any and all other Preferred Creditors and Unsecured Creditors, who do not provide notice of a claim by the later of the Effective Date or 30 days from the date on which the Proposal Trustee sends a notice pursuant to section 149 of the BIA, shall be and are hereby forever barred from making any Claims against the Debtor and shall not be entitled to a distribution from the Proposal Proceeds, and all other Claims shall be and are hereby forever extinguished, except for Unaffected Claims.
6. The Debtor and/or the Proposal Trustee are hereby authorized and directed to take all further actions or steps necessary or appropriate to implement and complete the Proposal, including but not limited to taking possession of the Proposal Proceeds, and making all payments and distributions required to be made under the terms of the Proposal, and such steps and actions taken are hereby approved.

7. From and after the date of the Proposal, each Creditor of the Debtor and any person affected by the Proposal shall hereby be deemed to have consented and agreed to all of the provisions of the Proposal.
8. The Debtor and the Proposal Trustee are hereby granted leave to apply to this Court for such further advice and direction or assistance as may be necessary to give effect to the terms of this Order and the Proposal.
9. Pursuant to the BIA, this Order shall have full force and effect in all provinces and territories of Canada against all persons, firms, corporations, governmental, municipal and regulatory authorities against whom it may be enforceable.
10. This Court requests the aid and recognition of any court or any judicial, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and the Proposal, and to assist the Debtor, the Proposal Trustee and their agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order and the Proposal or to assist the Debtor, the Proposal Trustee and their agents in carrying out the terms of this Order or the Proposal.
11. Service of this Order shall be deemed good and sufficient by:
 - (a) Serving the same on:
 - (i) the persons listed on the service list created in these proceedings;
 - (ii) any other person served with notice of the Approval Application;
 - (iii) any other parties attending or represented at the Approval Application;and service on any other person is hereby dispensed with.

12. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

J.C.Q.B.A.