

**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 APPLICANT AREHADA MINING LIMITED
(Application Returnable on February 10, 2023)

February 7, 2023

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Proposed Liquidator

PART 1 – OVERVIEW

1. Arehada Mining Limited (the “**Applicant**”) seeks this application for an order winding up the company as well as appointing, without security, Albert Gelman Inc. (“**AGI**”) as liquidator of all of its assets, undertakings and properties. The Applicant also seeks an order establishing a claims solicitation and claims bar process to approve and establish a procedure for the identification, resolution and barring of certain claims against the Applicant.

2. The Applicant brings this application under s. 207(b) of the *Business Corporations Act* (Ontario) (“**OBCA**”) as the shareholders had already unanimously passed and approved a special resolution for the voluntary dissolution of the company. However, as is discussed herein, given the cessation of business operations and limited financial resources of the Applicant, it is appropriate that the winding up of the Applicant continue under the supervision of the Court.

PART 2 – FACTS

Background

3. Arehada Mining Limited is a public company duly incorporated pursuant to the laws of the Province of Ontario. The Applicant was a development-stage mining enterprise engaged in the exploration development, extraction and refining of zinc-lead-silver metals in the Inner Mongolia Autonomous Region of China.¹

4. The Applicant’s majority shareholder is Arehada (Barbados) Holding Corporation (“**HoldCo**”), a company domiciled in the jurisdiction of Barbados, holding approximately 78% of

¹ Application Record (“**AR**”), Affidavit of Graham C. Warren sworn on January 31, 2023 (“**Warren Affidavit**”), Tab 2, para. 3.

the outstanding common shares of the company. The remaining portion of the Applicant's common shares are owned by various Canadian investors.²

5. Steve Fan Wang ("**Steve Wang**") is the former CEO of the Applicant and Chairman of the Board of Directors, while his brother, Tom Zhen Wang ("**Tom Wang**", and together with Steve Wang, the "**Wang Brothers**") is the former President and General Manager of the company. Together, the Wang Brothers own all of the outstanding shares of Baiyinhanshan Holding Corporation ("**BHC**"), a Barbados corporation, which in turn holds 95% of HoldCo. The remaining 5% of HoldCo's shares are owned by a Chinese national, Li Qilong.³

6. The Applicant is the beneficial owner of Arehada (Barbados) Corporation ("**ABC**"), a Barbados corporation, which was the sole shareholder of the operating subsidiary, Arehada Mining Corporation ("**Arehada China**"), a Chinese corporation.⁴

Shanjin Transaction and Ceasing of Operations

7. In the winter of 2010, ABC entered into an agreement for the sale of Arehada China to Shanjin Mining Corporation ("**Shanjin**"), a Shandong-based Chinese mining company ("**Shanjin Transaction**").⁵

8. Following the Shanjin Transaction, all shares of Arehada China were transferred from ABC to Shanjin, ending all the Applicant's active business and mining operations. However,

² AR, Warren Affidavit, Tab 2, at para. 4.

³ AR, Warren Affidavit, Tab 2, at paras. 6-7.

⁴ AR, Warren Affidavit, Tab 2, at para. 8. The registered shareholders of ABC are BHC and Li Qilong. BHC and Li Qilong assigned all of their beneficial interest in the ABC shares to the Applicant and hold the ABC shares as nominees for and in trust for the Applicant.

⁵ AR, Warren Affidavit, Tab 2, at paras. 9-10.

the release of the sale proceeds was delayed pending the determination of the applicable tax rate by the relevant taxing authority.⁶

9. As a result, the Applicant experienced a liquidity crisis leading to the inability to complete and file its audited financial statements for the year ending December 31, 2010, and ultimately a cease trade order (“CTO”) being issued by the Ontario Securities Commission, the British Columbia Securities Commission, and the Alberta Securities Commission. Presently, the CTOs continue in effect and the Applicant’s shares are not listed on any stock exchange.⁷

Tiancheng Investment

10. In March 2014, the taxation issues regarding the Shanjin Transaction were determined. Following this determination, ABC was required to apply for approval from the State Authority for Foreign Exchange (“SAFE”) to remit funds out of China and have the funds released to the Applicant in Canada.⁸

11. After the application for SAFE approval, Steve Wang advised that according to SAFE, it would more likely approve the funds being remitted to a foreign seller (ABC) if the funds were first reinvested in a Chinese subsidiary.⁹

12. In the spring of 2014, with a view to satisfying SAFE requirements, ABC entered into agreements with Yunnan Xuming Tiancheng Tourism Development Co. Ltd. (“**Tiancheng**”) where it acquired a 92.98% equity interest by investing RMB¹⁰ 225 million in registered capital

⁶ AR, Warren Affidavit, Tab 2, at para. 10.

⁷ AR, Warren Affidavit, Tab 2, at paras. 11-13.

⁸ AR, Warren Affidavit, Tab 2, at paras. 14 and 16.

⁹ AR, Warren Affidavit, Tab 2, at para. 17.

¹⁰ “RMB” refers to “renminbi” which is the official currency of China.

(the “**Tiancheng Equity Investment**”) and a debt investment in the principal amount of RMB 176.94 million (the “**Tiancheng Shareholder Loan**”, together with Tiancheng Equity Investment, the “**Tiancheng Investment**”). As a result, by the end of 2014, the Company’s principal asset was the Tiancheng Investment (through its subsidiary ABC).¹¹

13. By an agreement dated March 31, 2015 (the “**Investment Purchase Agreement**”), ABC agreed to sell the Tiancheng Investment to HoldCo for RMB 401.94 million, to be completed upon the satisfaction of certain conditions, including ratification of the Shanjin Transaction, Tiancheng Investment and approval of the transaction contemplated in the Investment Purchase Agreement by the minority shareholders of the Applicant (the “**Minority Shareholders**”).¹²

Shareholder Approval of Dissolution and Current Situation of the Applicant

14. In April 2015, the Applicant called an annual general and special meeting to, among other things, seek shareholder approval to ratify the Shanjin Transaction, the Tiancheng Investment and the Investment Purchase Agreement, as well as the shareholder approval of the Company’s dissolution as it no longer carried on any active business operations since the Shanjin Transaction. Such approvals and ratifications were obtained in the special meeting dated April 29, 2015, where the shareholders unanimously passed the necessary special resolution.¹³

15. In particular, it was resolved by the shareholders that once the Applicant received the funds from HoldCo arising out of the Investment Purchase Agreement, it would distribute the

¹¹ AR, Warren Affidavit, Tab 2, at paras. 18-19.

¹² AR, Warren Affidavit, Tab 2, at para. 20.

¹³ AR, Warren Affidavit, Tab 2, at para. 22.

funds to the Minority Shareholders, following which the Applicant would proceed with the dissolution.¹⁴ Between 2016 and 2019, the Applicant received an aggregate of \$2.653 million.¹⁵

16. In the fall of 2019, the Applicant began to experience difficulty communicating with Steve Wang, who was the primary connection to HoldCo and ensuring funds would be received.¹⁶

17. Since that time, the Applicant has not received any further communications from Steve Wang or any of its contacts in China through whom the Applicant had traditionally communicated. No person on the current management of the Applicant has any personal knowledge of Steve Wang's whereabouts or how to locate him.¹⁷

18. Although approved by the shareholders, the wind-up and dissolution proceedings cannot be completed by the Applicant as it did not receive the final installments payable for the sale of the Tiancheng Investment. Therefore, given management's inability to obtain appropriate updates on the status of the balance of proceeds due from the sale of the Tiancheng Investment and the Applicant's limited available resources, the Applicant seeks the appointment of a licensed insolvency trustee as court-appointed officer to carry out the liquidation and dissolution process.¹⁸

¹⁴ AR, Warren Affidavit, Tab 2, at para. 22.

¹⁵ AR, Warren Affidavit, Tab 2, at paras. 24-25.

¹⁶ AR, Warren Affidavit, Tab 2, at para. 25-28.

¹⁷ AR, Warren Affidavit, Tab 2, at para. 27-28.

¹⁸ AR, Warren Affidavit, Tab 2, at paras. 30-35.

PART 3 – LAW AND ARGUMENT

The Winding-up Order and The Appointment of Liquidator

19. Section 207(1) of the OBCA¹⁹ provides that:

A corporation may be wound up by order of the court, ...

(b) where the court is satisfied that,

...

(ii) proceedings have been begun to wind up voluntarily and it is in the interest of contributories and creditors that the proceedings should be continued under the supervision of the court,

(iii) the corporation, though it may not be insolvent, cannot by reason of its liabilities continue its business and it is advisable to wind it up, or

(iv) it is just and equitable for some reason, other than the bankruptcy or insolvency of the corporation, that it should be wound up...²⁰

20. Section 208(1) of the OBCA provides that a winding-up order may be made by an application of the corporation.²¹

21. Section 209 and 210 of the OBCA expressly confers on this Court the jurisdiction to make an order winding up the company and appointing liquidator.²²

22. Although voluntary wind up proceedings have not practically started due to the refusal or failure of HoldCo to remit the balance of funds, the Minority Shareholders have approved the wind up and dissolution. The Applicant has limited resources to pursue the payment of funds from a foreign entity (HoldCo) and as a result, it is in the interests of the Minority

¹⁹ *Business Corporations Act*, R.S.O. 1990, c. B.16 (“OBCA”).

²⁰ *Ibid*, s. 207 (1).

²¹ *Ibid*, s. 208 (1).

²² *Ibid*, s. 209.

Shareholders, and any creditors, to continue or initiate the wind up proceedings under the supervision of the Court.

23. Further, while the Applicant may not meet the test of insolvency as it continues to carry the significant receivable in respect of the sale of the Tiancheng Investment, its limited resources may impact its ability to continue paying liabilities as they become due. As such, it is advisable to order the wind up of the Applicant.

24. When dealing with just and equitable winding-up proceedings, this Court has the authority to order a winding up of a corporation even without a finding of oppression.²³ In all of the circumstances, the Applicant submits that it is just and equitable to order the wind up of the Applicant and appoint a liquidator to manage the wind up and dissolution.

25. The proposed liquidator, who would be a licensed insolvency trustee, could determine the value, if any, of the receivable in relation to the sale of the Tiancheng Investment and ensure that any creditors are dealt with fairly and in accordance with the relevant statutes governing the treatment and priority of creditors. Further, if appropriate, the liquidator will determine if the Applicant should be assigned into bankruptcy.

26. AGI has consented to act as Liquidator if appointed by the Court on terms substantially in accordance with the draft order which includes, but is not limited to, a Liquidator's Charge securing the payment of the reasonable fees and disbursements of the Liquidator and its counsel and counsel assisting in the liquidation and dissolution process.²⁴

²³ [*Libfeld v. Libfeld, 2021 ONSC 4670 \(CanLII\), at para 150.*](#)

²⁴ AR, Consent to Act of Albert Gelman Inc. dated January 30, 2023 (“**AGI Consent**”), Tab 3, at 180.

The Proposed Claims Solicitation and Bar Order

27. As noted above, in considering an application for a winding up order, the Court “may make any interim or other order as is considered just, and upon the making of the order may, according to its practice and procedure, refer the proceedings for the winding up to an officer of the court for inquiry and report and may authorize the officer to exercise such powers of the court as are necessary for the reference.”²⁵

28. The Applicant seeks an order authorizing the Liquidator to establish and implement a claims solicitation and claims bar process (the “**Claims Solicitation and Bar Order**”). Through the Claims Solicitation and Bar Order, the Liquidator will determine the universe of claims and the potential distribution to creditors and ensure that no creditors exist prior to any distributions are made to shareholders.²⁶

29. The proposed Claims Solicitation and Bar Order is similar to orders made in other types of proceedings (particularly in insolvency proceedings) and was drafted in consultation with AGI as the proposed Liquidator.

PART 4 – ORDER REQUESTED

30. The Applicant respectfully submits that it is entitled to the following relief:

- (i) An order pursuant to section 207 of the *Business Corporations Act* to wind up Arehada Mining Limited;

²⁵ OBCA, *supra* note 19, at s. 209.

²⁶ [*Timminco Ltd, Re*, 2014 ONSC 3393 at para 43.](#)

(ii) An order pursuant to sections 210 of the *Business Corporations Act* appointing Albert Gelman Inc. as liquidator, without security, of all of the assets, undertakings and properties of Arehada Mining Limited acquired for, or used in relation to a business carried on by the company;

(iii) An order approving and establishing a procedure for the identification, resolution and barring of certain claims against the Applicant.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

February 7, 2023



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SCHEDULE “A”

List of Authorities

1. [Libfeld v. Libfeld](#), 2021 ONSC 4670.
2. [Timminco Ltd, Re](#), 2014 ONSC 3393.

SCHEDULE "B"

Statutes and Regulations Cited

Business Corporations Act, R.S.O. 1990, c. B.16

Winding up by court

207 (1) A corporation may be wound up by order of the court,

(a) where the court is satisfied that in respect of the corporation or any of its affiliates,

(i) any act or omission of the corporation or any of its affiliates effects a result,

(ii) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or

(iii) the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner,

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer; or

(b) where the court is satisfied that,

(i) a unanimous shareholder agreement entitled a complaining shareholder to demand dissolution of the corporation after the occurrence of a specified event and that event has occurred,

(ii) proceedings have been begun to wind up voluntarily and it is in the interest of contributories and creditors that the proceedings should be continued under the supervision of the court,

(iii) the corporation, though it may not be insolvent, cannot by reason of its liabilities continue its business and it is advisable to wind it up, or

(iv) it is just and equitable for some reason, other than the bankruptcy or insolvency of the corporation, that it should be wound up; or

(c) where the shareholders by special resolution authorize an application to be made to the court to wind up the corporation. R.S.O. 1990, c. B.16, s. 207 (1).

Who may apply

208 (1) A winding-up order may be made upon the application of the corporation or of a shareholder or, where the corporation is being wound up voluntarily, of the liquidator or of a contributory or of a creditor having a claim of \$2,500 or more. R.S.O. 1990, c. B.16, s. 208 (1).

Power of court

209 The court may make the order applied for, may dismiss the application with or without costs, may adjourn the hearing conditionally or unconditionally or may make any interim or other order as is considered just, and upon the making of the order may, according to its practice and procedure, refer the proceedings for the winding up to an officer of the court for inquiry and report and may authorize the officer to exercise such powers of the court as are necessary for the reference. R.S.O. 1990, c. B.16, s. 209.

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

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Proceeding commenced at Toronto

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