IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *Re: Bolivar Gold Corp.*, 2006 YKSC 7 Date: 20060119
Docket: S.C. No. 05-A0151
Registry: Whitehorse

IN THE MATTER OF AN APPLICATION FOR APPROVAL OF AN ARRANGEMENT UNDER SECTION 195 OF THE *BUSINESS CORPORATIONS ACT* OF THE YUKON TERRITORY, R.S.Y. 2002, c. 20 AND AMENDMENTS THERETO

BOLIVAR GOLD CORP.
Suite 200, 204 Lambert Street
Whitehorse, Yukon
Y1A 3T2

Petitioner

Before: Mr. Justice W.M. Darichuk

Appearances:

James Tucker and Robyn Ryan Bell	For the Petitioner
Katherine Kay and Jessica Bookman	For Gold Fields Limited
Mark Gelowitz	For the Chairman of the Special Meeting
Luis Sarabia, Alex Moore and James Bunting	For Scion Capital Corporation, The Clinton Group, and Arnold and S. Bleichroeder Advisers, LLC

MEMORANDUM OF JUDGMENT
DELIVERED FROM THE BENCH

[1] DARICHUK J. (Oral): There are three principles the Court must bear in mind in determining whether or not there should be a final approval of the plan of arrangement. The first one attracts consideration of any evidence before the Court

concerning the statutory requirements. Learned counsel has referred to some of the evidence before the Court now in respect to the petition dealing with the assertion concerning insider trading and, if I recorded it correctly, the inappropriateness pertaining to conduct and action pertaining to the proxy voting, the vote casting and the notice given.

[2] There are other matters that pertain to the statutory requirements. They should be dealt with by the Court before coming to any conclusion on the issue of fairness. If I were to set aside this principle, then I would move on to the second principle. It deals with the arrangement being put forward in good faith. That attracts a consideration of the evidence presently before the Court in respect to what transpired and the review of the actions of their directors.

[3] If that evidence were to be believed, it could be that there is an air of reality to those assertions. I refer only to the evidence before the Court because, obviously, with the lateness of the filing of the petition, everyone has not had an opportunity to file other evidence. Ordinarily, to do justice, the Court considers all the evidence before it from all parties. Parties have a right not only to be heard but to file whatever evidence they feel is relevant and as well, other materials relevant and material to the issues before it. I am handicapped in that I only have evidence that has been presented on the one motion.

[4] Counsel only referred to the issue of oppression. The petition filed is not specifically so restricted. Item number four that reads:

> "Seek a declaration that the letter agreement entered into on November 21, 2005, between parties is void or invalid."

[5] That impacts on the hearing that was scheduled for today. It impacts as well on consideration of the final principle. That is, whether or not the arrangement is fair and reasonable.

[6] On balance, it would appear that the similarity of the issues attract a hearing of both applications at the same time. I come to that conclusion on the totality of what I have read and from the submissions made by counsel. I set aside, in coming to that decision, the issue of estoppel. It does not impact on my decision for this morning. I am of the opinion that to do justice in this case requires that the parties should have the opportunity to respond appropriately and be heard. The issues are not only similar, they appear to be interrelated, and I could not do justice to ruling on the issue of fairness absent, all parties having the opportunity to file other material.

[7] In effect, I think the proceedings ought to be adjourned and both applications heard at the same time. I have not come to the final order because counsel was going to rise while I was speaking. I now give counsel that opportunity.

(Submissions by counsel)

[8] Despite the further submission I have received, I am satisfied that, on balance, the matters ought to be heard together and it is so ordered.

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DARICHUK J.