

BRITISH VIRGIN ISLANDS HIGH COURT (COMMERCIAL DIVISION)

***In the Matter of B&A Fertilizers Limited and
In the Matter of Rio Verde Mineral
Development Corp and In the Matter of a
Plan of Arrangement Pursuant to Section
177 of the BVI Business Companies Act,
2004 (As Amended) Claim No. BVIHC (Com)
No 132 of 2012***

**SECTION 177 BVI BUSINESS COMPANIES ACT,
2004 (THE "ACT") - PLAN OF ARRANGEMENT -
WHETHER SECTION 177 PERMITS CANCELLATION
OF RIGHTS OF WARRANT HOLDERS FOR NO
CONSIDERATION - WHETHER ARRANGEMENT TO
BE RESTRUCTURED TO PROVIDE FOR
WARRANTS TO BE COMPULSORILY PURCHASED -
WARRANT HOLDERS ENTITLED TO BE
CONSULTED**

This case concerned an Application for an order pursuant to Section 177 of the Act approving a proposed plan of arrangement between B&A Fertilizers Ltd ("B&A") and Rio Verde Mineral Development Corp ("Rio Verde") and for all necessary determination, directions and permissions including notably a determination whether any person should be permitted to dissent, pursuant to section 179 of the Act, from the proposed arrangement.

B&A is a wholly owned subsidiary of B&A Mineracao SA (B&A Brazil). B&A Brazil wished to take over Rio Verde. The effect of the plan of arrangement if approved was that each member of Rio Verde would have its shares in Rio Verde exchanged for an equivalent number of redeemable shares in B&A, which will be redeemed by B&A at a price of \$0.40 per share on the next business day following the effective date of the merger. The only shareholder of the merged B&A will thus be B&A Brazil. This will have achieved the takeover of Rio Verde.

At the hearing of the Application it was represented that the reason why B&A Brazil did not simply make an offer to the Rio Verde shareholders is that they wish the merged entity to be rid of Rio Verde's current obligations to the holders of some 18 million warrants. The holders of those warrants, whose terms recite that they were granted for value, are entitled to exercise them up to and including 28 July 2016. Upon exercise, the

warrant holder becomes entitled to one Rio Verde share upon payment of (in the case of 17 million of the warrants) \$0.85 per share and (in the case of the remainder) \$0.65 per share). By Clause 7 of the proposed plan of arrangement "Upon the merger, each of the Warrants shall be repurchased and cancelled by B&A for nil consideration or for such consideration as may be determined pursuant to the exercise of any dissent right ordered by the Court". Notice of the Application was not given to the warrant holders.

The Commercial Judge held that it was contrary to all principle that a class of holders of securities should be expropriated otherwise than in accordance with the terms under which the security was issued without at the very least having the opportunity to meet and to express their views on the proposal and, if so advised, to approach the Court about its terms. He further found that neither the general principle that property may not be forfeited except according to law nor the specific provisions of the indenture making alteration of warrant holders' rights subject to an extraordinary resolution can be overridden by a term in a Section 177 arrangement providing for compulsory purchase in the absence of an opportunity for warrant holders having a say in the matter. He further stated that the grant of a right of dissent could not be offered as a substitute for the right to consider and vote on the proposal and for the opportunity to make representations to the Court about it before it is approved.

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