SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-11-060598-212

DATE: July 8, 2022 (**RECTIFIED July 13, 2022**)

BY THE HONOURABLE MARIE-ANNE PAQUETTE, Chief Justice

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36 OF:

BLACKROCK METALS INC.
BLACKROCK MINING INC.
BRM METALS GP INC.
BLACKROCK METALS LP.
Debtors
-and-

DELOITTE RESTRUCTURING INC.
Monitor
-and-

INVESTISSEMENT QUÉBEC
OMF FUND II H LTD.
Secured Creditors
-and-

13482332 CANADA INC.
Shareholder Bidder
-and-

WINNER WORLD HOLDINGS LIMITED
4470524 CANADA INC.
GOLDEN SURPLUS TRADING
PROSPERITY STEEL
Intervenors

RECTIFIED JUDGMENT
ON THE AMENDED SHAREHOLDER BIDDER'S APPLICATION TO EXTEND THE PHASE 2 BID DEADLINE (SEQ. 23)
AND
ON THE DEBTORS' APPLICATION TO APPROVE A VESTING ORDER (SEQ. 17) [1]

OVERVIEW

[1] The debtors BlackRock Metals Inc., BlackRock Mining Inc., BlackRock Metals LP and BRM Metals GP Inc. (collectively: **BlackRock**) were established in 2008. They are developing a metals and materials manufacturing business with a mine in Chibougamau, and a metallurgical plant to be located at the Port of Saguenay (**Project Volt**).

[2] The mine and plant to be built under Project Volt will eventually supply vanadium, high purity pig iron and titanium products, three specialty metals which are, according to BlackRock, central to the green materials transition in North America. BlackRock's

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[1] Reasons in support of orders issued on May 31, 2022 and rectified on June 1, 2022

business plan contemplates a forty-one year project life generating strong returns, with a small-scale mining operation.

[3] As of now, BlackRock has been in the process of raising the necessary capital to start the construction and implementation of Project Volt, which is now being estimated to cost approximately US$1.02 billion. Considering the early stage of its development, no revenues have ever been generated by the project.

[4] BlackRock's only secured creditors are OMF Fund II H Ltd. (**Orion**) and Investissement Québec (**IQ**). On January 18, 2019, BlackRock signed a loan credit agreement with Orion and IQ to supply the necessary working capital required to continue Project Volt. This loan was due and payable on December 1, 2022 and, as of now, Orion and IQ's secured claim amounts to approximately $100M, which constitutes the best part of BlackRock's pre-filing obligations. Orion and IQ also own, respectively, 18% and 12% of BlackRock's shares.

[5] On December 22, BlackRock filed an Application for an Initial Order and other ancillary relief in the present *Companies' Creditors Arrangement Act* (**CCAA**)[2] restructuring proceedings.

[6] On January 7, 2022, the Court issued a two-part order in view of the sale of the assets of BlackRock. Firstly, the Court established the parameters of a sale and investment solicitation process (**SISP**) for the sale of such assets.

[7] Secondly, the Court approved the Agreement of Purchase and Sale signed by Orion and IQ as purchaser (**Stalking Horse Agreement**) and ordered that this agreement be considered as constituting the "Stalking Horse Bid" under the SISP. The agreed purchase price under the Stalking Horse Agreement is to be equal to the fair market value of BlackRock's secured debt towards Orion and IQ (approximately $100M).

[8] Pursuant to the January 7, 2022 orders, Phase 2 Bids under the SISP were to be submitted before May 11, 2022, as will be discussed below.

[9] Two Applications are before the Court in relation to the above:

9.1. Amended Application by the Shareholder Bidder, 13482332 Canada Inc. (**Canada Inc.**) to extend the Phase 2 Bid Deadline (**Bid Extension Application**); and

9.2. BlackRock' Application to approve a vesting order (**RVO application**)

[10] In the Bid Extension Application, Canada Inc. seeks to extend the deadlines provided for in the January 7, 2022 orders, with the view of continuing to canvass the

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[2] R.S.C. 1985, c. C-36.

market for financial partners that would allow it to submit a Phase 2 Bid after the Phase 2 Bid deadline.

[11] In the RVO Application, BlackRock seeks an order approving the sale of its assets essentially along the terms of the IQ and Orion's Stalking Horse Agreement (**Proposed Transaction**).

[12] On May 31, 2022, due to time constraints, the Court rejected the Bid Extension Application and granted the RVO Application, with reasons to follow. The reasons are found below.

1. PROCEDURAL BACKGROUND (COURT ORDERS)

[13] On December 22, 2021, BlackRock filed an Application for an Initial Order and other ancillary relief.

[14] On December 23, 2021, the Court issued a First Day Initial Order pursuant to the CCAA and, *inter alia*, appointed Deloitte Restructuring Inc. as the monitor (**Monitor**).

[15] On January 7, 2022, the Court issued an *Amended and Restated Initial Order* and an *Order Approving a Sale and Investment Solicitation Process (SISP) and Approving a Stalking Horse Agreement of Purchase and Sale*.

[16] The January 7, 2022 orders (**Initial Orders**) provided that BlackRock was authorized to borrow from Orion and IQ, as interim lenders, such amounts from time to time as BlackRock may consider necessary or desirable, up to a maximum principal amount of $2M outstanding at any time, to fund the ongoing expenditures of BlackRock and to pay such other amounts as may be permitted (**Interim Facility**). The Court also authorized a corresponding Interim Charge, for a maximum amount of $2.4M, in favor or IQ and Orion.

[17] The Initial Orders also approved a SISP to be conducted in accordance with the approved procedures (**Bidding Procedures**);

17.1. authorized the Monitor and BlackRock to implement the SISP;

17.2. approved the Stalking Horse Agreement, solely for the purposes of:

(i) constituting the "stalking horse bid" under the SISP; and

(ii) approving the Expense Reimbursement (as defined in the Stalking Horse Agreement), and subject to further Order of this Court.

[18] Pursuant to the Initial Orders and at the request of the Intervenors (shareholders), the Court extended the SISP by an additional 30 days beyond what was originally contemplated.

[19] The Stay of proceedings was thereafter extended to June 30, 2022, in accordance with further requests made and in accordance with the debate arising from the two Motions identified above.

2. PHASES OF THE SISP

[20] The objective of the SISP was to solicit interest either (i) in one or more sales or partial sales of all, substantially all, or certain portions of the BlackRock's business; and/or (ii) for an investment in a restructuring, recapitalization, refinancing or other form of reorganization of BlackRock or its business.

[21] The Bidding Procedures provide that a party interested in participating in the SISP must sign and deliver to the Monitor a non-disclosure agreement (**NDA**) and upon doing so, is considered a "**Phase 1 Qualified Bidder**", following which the Monitor will provide to such party a confidential information memorandum (**CIM**) and access to the confidential virtual data room (**VDR**) set up by BlackRock and the Monitor.

[22] The Bidding Procedures further provide that if a Phase 1 Qualified Bidder wishes to submit a bid, it must deliver to the Monitor a non-binding letter of intent (**LOI**) which must conform to certain specified requirements (**Phase 1 Qualified Bid**) no later than 5:00 p.m. on March 9, 2022 (**Phase 1 Bid Deadline**).

[23] Following the Phase 1 Bid Deadline, BlackRock shall determine, in consultation with the Monitor, if an LOI qualifies as a "**Phase 1 Successful Bid**", in which case the bidder is thereafter deemed a "**Phase 2 Qualified Bidder**".

[24] Phase 2 Qualified Bidders shall thereafter submit their Phase 2 Qualified Bid no later than 5:00 p.m. on May 11, 2022, or such other date or time as may be agreed by the Monitor in consultation with BlackRock and with the authorization of Orion and IQ as Stalking Horse Bidders, acting reasonably (**Phase 2 Bid Deadline**).

[25] Also pursuant to the Bidding Procedures, the Stalking Horse Bidders are Phase 2 Qualified Bidders for all purposes under the SISP.

[26] Therefore, Canada Inc. had until May 11, 2022, 5:00 p.m. (Eastern Standard Time) to submit its Phase 2 Qualified Bid (**Phase 2 Bid Deadline**).

3. TASKS PERFORMED BY THE MONITOR IN ACCORDANCE WITH THE SISP

[27] Further to the Initial Orders, the Monitor undertook the following steps to conduct the solicitation process in accordance with the SISP:

a. the Monitor contacted 415 potentially interested parties;

b. 374 potentially interested parties received the Teaser according to email confirmations received by the Monitor;

c. 232 potentially interested parties were contacted directly by the Monitor, in addition to the general distribution that occurred on January 10, 2022;

d. 65 potentially interested parties participated in more serious discussions about the opportunity or confirmed that they were not interested;

e. 7 interested parties executed an NDA and were granted access to the VDR; and,

f. 1 interested party (Shareholder Bidder) submitted a non-binding Letter of Interest (LOI) prior to the Phase 1 Bid Deadline.[3]

4. CANADA INC.'S LOI

[28] Canada Inc. was incorporated on March 8, 2022, as a special purpose vehicle to participate in the SISP and submit a bid.

[29] Canada Inc.'s shares are owned by 3 individuals, Mr. Edward Yu, Mr. Solomon (Sam) Pillersdorf and Mr. Leslie A. Wittlin, who, directly or through corporate entities under their control, own approximately 50% of the outstanding shares of BlackRock. Mr. Yu, Mr. Pillersdorf and Mr. Wittlin also act as directors and officers of the company. Canada Inc.'s representatives submit that they have well established links into the mining industry and, based on same, have assembled a team of experienced advisory professionals in the field.

[30] The Monitor did not receive any other LOI on or before the Phase 1 Bid Deadline. Therefore, Canada Inc.'s non-binding LOI[4] of March 9, 2022 is the only Phase 1 Successful Bid.

[31] In its LOI, Canada Inc. proposes a purchase price for BlackRock's shares that shall be either the sum of $100M or such greater amount as would be required to exceed the minimum purchase price as defined in the Initial Order.

5. ORDERS SOUGHT AND CONCLUSIONS OF THE COURT

5.1 The Bid Extension Application

[32] Canada Inc. argues that its tremendous efforts to submit a bid to the Monitor are on the verge of bearing fruit, albeit slightly past the Bid Deadline. Canada Inc. therefore begs the Court to extend the Phase 2 Bid Deadline (which expired on May 11, 2021) for an extra thirty days after the present judgment.

[33] The Monitor, BlackRock and Orion and IQ object to such extension.

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3 Fifth Report, par. 27.
4 Exhibits A-2, R-3.

[34] For the reasons below, the Court refused the extension sought.

5.2 The RVO Application

[35] The only pending bid therefore is the one made by Orion and IQ, the Stalking Horse Bidders. With the support of BlackRock and of the Monitor, they beg the Court to approve the drafted agreement.[5]

[36] The **Intervenors**, who own approximately 50% of the shares of BlackRock, object to the structure of the Proposed Transaction, as it would amount to an illegal appropriation of their shares, without their consent. They also object to the granting of a release to Orion and IQ, as contemplated under the Stalking Horse Agreement.

[37] For the reasons below, the Court dismissed the Intervenors' objection and approved the transaction in accordance with the RVO.

ANALYSIS

6. BID EXTENSION APPLICATION

6.1 Facts relevant to the issue

[38] As indicated above, Canada Inc.'s LOI[6] is the only Phase 1 Successful Bid. Therefore, only IQ and Orion (Stalking Horse Bidders) and Canada Inc. (Shareholder Bidder) were permitted to proceed to Phase 2 of the SISP.

[39] More particularly, on March 8-9, 2022, before the Phase 1 Bid Deadline, Canada Inc. was incorporated and delivered to the Monitor a non-binding LOI, which was confirmed as a Phase 1 Successful Bid. Canada Inc. therefore qualified for Phase 2 of the SISP.

[40] To assist in making such a decision, BlackRock and the Monitor requested and received clarifications, particularly with respect to the ability of Canada Inc.'s representatives to fund its bid from their own assets or from third-party financing (**Clarification Letter**)[7], which will be discussed below.[8]

[41] At a later meeting, held on May 9, 2022, Canada Inc. informed the Monitor and BlackRock that despite having initiated, with the help of its own financial advisors, a solicitation process to identify financial partners that would support its bid, it would not be in position to file a qualified bid by the Phase 2 Deadline.

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5 Exhibit R-2.
6 Exhibits A-2, R-3.
7 Exhibit R-5.
8 See par. [68] and following of the present judgment.

[42] Canada Inc. therefore verbally requested that the Phase 2 Bid Deadline be extended for an additional 30 days in order to continue to canvass the market for financing.[9]

[43] The Monitor consulted with BlackRock and requested the position of Orion and IQ, as Stalking Horse Bidders, in accordance with paragraph 21 of the approved Bidding Procedures. They expressed serious concerns but were agreeable to considering an extension of the Phase 2 Bid Deadline, subject to several conditions. These conditions included the financing (subordinate to the DIP and to the approximately $100M of secured debt held by the Orion and IQ) of the costs resulting from the extra 30-day extension (estimated at $500K) and the confirmation that no further extension would be sought in the future.[10]

[44] Canada Inc. replied that it was prepared to advance a first tranche of $200K of a DIP loan within one week of the acceptance date of their request for a SISP extension, and the balance of $300K as needed. Canada Inc. contemplated that this proposed loan totaling $500K was to be made on the same terms and conditions as the existing DIP loan of the Secured Lenders, and was to rank *pari passu* with them in all respects.

[45] The Monitor estimated that it was unlikely that the extension sought would allow Canada Inc. to provide a proper bidding offer at the end of the extension. After further consultation with BlackRock and the Stalking Horse Bidders and with their support, the Monitor denied the extension and informed Canada Inc. accordingly on May 12, 2022.

[46] On May 11, 2022, Canada Inc. filed the present Bid Extension Application.

6.2 Opposing arguments of the parties

[47] Canada Inc. submits that its LOI conforms with the requirements of the Bidding Procedures in that, without limitation, it meets the “Minimum Purchase Price” requirement of providing at closing net cash proceeds that are not less than the aggregate of (a) the amount of cash payable under the Stalking Horse Agreement together with the amount of obligations being credit bid thereunder, (b) the amount of expense reimbursement payable to the Stalking Horse Bidders, plus (c) a minimum overbid amount of $1M.

[48] Canada Inc. also pleads that there is equity for the stakeholders of BlackRock, including the shareholders, based on their knowledge of the company and on recent pre-money valuations performed by third parties which ranged between USD$175M and 350M. In order to assist in designing and financing its final bid, Canada Inc. has retained at its own costs the services of two consultants, FTI Capital Advisors Canada and ERG Securities US.

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9 Exhibit R-6.
10 Exhibit R-7.

[49] Canada Inc.'s consultants have contacted 156 investors to solicit interest in the opportunity. To date, seven remain highly interested in the opportunity and have executed NDAs and are continuing to perform due diligence on the asset. An additional three have expressed interest and are evaluating the opportunity internally before proceeding to execute an NDA. Investors that have executed NDAs have been added to the VDR and are actively analyzing and reviewing BlackRock's materials. The Consultants have prepared a report on the status of the financing process.[11] For example, Canada Inc. submits a signed non-binding letter of interest signed on May 6, 2022, from a serious investment fund for a USD$65M financing, conditional *inter alia* on a 30-day-due diligence.[12] Canada Inc. further argues that the recent events in Ukraine have improved the outlook of Project Volt and increased the value of its strategic metals.

[50] However, according to Canada Inc., based on the feedback provided to its consultants from investors and given the complexity of this transaction, the condensed timeframe of the SISP is a significant hurdle for investors to perform the necessary due diligence in order to provide a commitment to finance the its Phase 2 Qualified Bid. As such, the Consultants believe that additional time will have a material impact on the likelihood of raising the capital required.

[51] Canada Inc. argues that although it has made significant progress, it needs more time to pursue these various opportunities and finalize the business and financial terms which will form part of the its Phase 2 Qualified Bid.

[52] To that effect, Canada Inc. reminds the Court of its broad discretion under section 11 of the CCAA and points to case law[13] that suggests that the Court would be justified to refuse an asset sale in the presence of impropriety in the sales process.

[53] The Monitor, BlackRock, Orion and IQ and BlackRock's First Nation Partners[14] oppose to such extension of the Phase 2 Bid Deadline.

[54] BlackRock, the Monitor and Orion and IQ argue that such extension would run contrary to the clear rules of the Bidding Procedures and would break the integrity of the SISP, to the prejudice of all potential bidders who made their decisions based on the rules known to all. Moreover, the extension sought would maintain uncertainty for BlackRock for an additional period, with no realistic chance of obtaining a better offer. Also, the extension would increase the costs and the amounts to be advanced by the Orion and IQ as interim lenders while Canada Inc. is not ready to pay for those expenses for the requested additional period.

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11 Exhibit A-3.
12 Exhibit A-4, filed under seal.
13 *Royal Bank v. Soundair Corp.*, 1991 CanLII 2727 (Ont. CA); *Cameron v. Bank of Nova Scotia* (1981), 38 C.B.R. (N.S.) 1 (N.S.C.A.); *Bank of Montreal v. Maitland* (1983), 46 C.B.R. (N.S.) 75 (N.S.S.C.).
14 Exhibit R-11.

6.3 Legal principles

[55] The CCAA primarily seeks to refinance and restructure insolvent companies rather than liquidate them.[15] When selling the assets of the company, one of the objectives is thus naturally to achieve the best possible price for the assets. This usually coincides with finding the best outcome for the company's creditors.

[56] To achieve this goal, the court benefits from a wide discretionary power pursuant to section 11 of the CCAA:

> **11 [General power of court]** Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.
>
> [Emphasis added]

[57] The three baseline requirements to meet for an order to be considered "appropriate in the circumstances" are appropriateness, good faith and due diligence.

[58] In addition, the order sought must advance the policy and remedial objectives of the CCAA to qualify as "appropriate" within the meaning of section 11.[16] The overarching remedial objectives pursued by the CCAA include:[17]

1. providing for timely, efficient and impartial resolution of a debtor's insolvency;
2. preserving and maximizing the value of a debtor's assets;
3. ensuring fair and equitable treatment of the claims against a debtor;
4. protecting the public interest; and
5. in the context of a commercial insolvency, balancing the costs and benefits of restructuring or liquidating the company.

[59] Hence, although the objective of any sale process is obviously to obtain the best possible price from prospective purchasers, monetary considerations cannot be the only relevant factor when the Court determines if it is appropriate to deviate from a process that has been duly followed by all parties involved.

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15 *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, par. 14-15.
16 *Canada v. Canada North Group Inc.*, 2021 SCC 30, par. 21; *9354-9186 Québec inc v. Callidus Capital Corp*, 2020 SCC 10, par. 48-51.
17 *9354-9186 Québec inc v. Callidus Capital Corp*, 2020 SCC 10, par. 40.

[60] On the contrary, it is well established that sale processes are important in CCAA proceedings and that modifying same *post facto* every time there is a chance of a better financial outcome could have a negative impact on all the parties involved. Therefore, Courts have often insisted on the importance of preserving the integrity of the sales process. As this court held in *Re Boutiques San Francisco Inc.*:

> [20] Dans le cadre des plans d'arrangement qu'elle autorise, le but de la LACC est, entre autres, de favoriser un processus ordonné et encadré où les paramètres choisis doivent par conséquent avoir un sens. Dans le contexte de cette loi, tout comme par exemple dans celui de la *Loi sur la faillite et l'insolvabilité*, la recherche du meilleur prix possible pour les créanciers ne peut se faire en vase clos, en ignorant la protection nécessaire de l'intégrité et de la crédibilité du processus choisi pour atteindre cet objectif.[18]

[61] The Bidding Procedures, which govern the SISP approved by this Court, are fundamentally important for assessing the Proposed Transaction as well as the arguments of the parties.[19]

6.4 Discussion

[62] The Monitor also explains that efforts have already been made for some years before the beginning of the CCAA proceedings in order to further finance Project Volt. BlackRock, with the assistance of its financial advisors at the time, have conducted a global search since 2015, but, and despite considerable time and effort, have not been able to secure the required funding.

[63] At the inception of the CCAA proceedings, the Court also modified the proposed Bidding Procedures to include a 30 day extension to the "Phase 1 Bid Deadline" based on a request from the Intervenors and their submission that such further time would suffice to ensure a fulsome and fair process. This extension has not led to the desired results.

[64] The Monitor then conducted a thorough solicitation process as part of the Phase 1 of the SISP, as mentioned previously, which culminated in a single LOI submitted by Canada Inc.:

> Based on the various discussions with prospective bidders during Phase 1 of the SISP, it was apparent to the Monitor that the BRM project, which had previously been promoted extensively in the market by BRM and its financial advisors for financing purposes, was already very well known by most of the strategic and industry leaders. This situation likely explains why many potentially interested

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[18] *Boutiques San Francisco Inc., Re*, 2004 CanLII 480, par. 20 (QC CS). See also *Bloom Lake, g.p.l. (Arrangement relatif à)*, 2015 QCCS 3064, par. 70 (leave to appeal dismissed, 2015 QCCA 754).

[19] See *Arrangement relatif à Nemaska Lithium inc.*, 2020 QCCS 3218, par. 14 (leave to appeal dismissed, 2020 QCCA 1488; leave to appeal to SCC dismissed, 2021 CanLII 34999).

> parties declined the opportunity without signing an NDA and without performing due diligence of the VDR.[20]

[65] The lack of interest of other bidders in taking part in the Debtor's restructuring has thus been apparent since the very first stages of the SISP process. According to the Monitor, potential players who were contacted either found the opportunity too risky, or not strategic or profitable enough, or did not believe in the feasibility of the technology involved. It remains unlikely that this situation will change in the near future.

[66] Moreover, Canada Inc. was unable to secure financing of its own bid during the extended 60 days of Phase 1 of the SISP and waited all the way until that phase's deadline to execute an NDA and to enter into the process.

[67] In determining that Canada Inc.'s non-binding LOI constituted a Phase 1 Successful Bid, the Monitor relied on Canada Inc.'s reassurance that it had both the ability and the means required to pay the offered purchase price and to raise or contribute further capital resources to BlackRock's business to continue it as a going concern. The LOI went on to state that the net worth of the Bidder's representatives was, collectively, well above the said amount and that "[b]ased on their extensive experience and engagement in the industry", they were "well placed to obtain both direct and/or third party financing in an aggregate amount sufficient both to complete the Transaction and thereafter required to proceed with the Business and lead it to profitability as a going concern."[21]

[68] Canada Inc., in its Clarification Letter of March 14, 2022, refused to provide more details about its representatives' respective worth.[22] Still, it is not in doubt that they have enough assets to finance its bid if needed.

[69] However, Canada Inc. wrote that it was "unable to advise with certainty to what extent [its] three principals […] may contribute to the capital required to fund the transaction contemplated by the non-binding LOI." This issue would "clarify as [its] funding plan finalizes through [its] on-going efforts already well underway." Canada Inc. confirmed that it would "have its financing, to the extent necessary and sufficient for the purpose of the binding LOI, on or before the Phase 2 bid deadline", but added that "some or all" of the funds "may come from external sources", which was subject to further due diligence that could only be performed during Phase 2 of the SISP.

[70] These answers are evasive and, in retrospect, proved to include many loopholes. Still, the Clarification letter was considered and the Monitor nonetheless qualified Canada Inc. for Phase 2.

[71] The Monitor understood that Canada Inc.'s primary focus during Phase 2 of the SISP was to secure financing, through equity or debt, in order to submit a binding offer

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20 Fifth Report, par. 28.
21 Exhibit A-2.
22 Exhibit R-5, par. 3.

prior to the Phase 2 Bid Deadline. Indeed, the due diligence performed during that Phase was limited. Only one meeting occurred, at the request of Canada Inc.'s consultants, with BlackRock and the Monitor, to review the assumptions supporting the financial model of BlackRock. Also, all the groups that were granted access spent a relatively short amount time on the VDR reviewing the information available for this kind of project.[23]

[72] At the time of the meeting on May 9, 2022, despite some cursory interest manifested by certain potential capital partners, and except for a non-binding LOI received from a third party for an amount (USD$65M) significantly less than the one required to exceed the Stalking Horse Bid ($100M), Canada Inc. received no other letter of intent or confirmation of interest in writing from a potential capital partner during the SISP.

[73] Critically, Canada Inc. also revealed on May 9, 2022 that none of its representatives actually intended to participate in the financing of an eventual Phase 2 Qualified Bid, should there be such a bid.

[74] The Monitor testified that had he known in due time that the shareholders had no intention to finance the bid using their own personal assets, Canada Inc. would likely not have qualified for Phase 2 of the SISP. This aspect of the LOI was described as a key consideration in the Monitor's decision at the time.

[75] In addition, the failure by Canada Inc. to confirm that it would fund all of the Debtor's costs, including professional costs, during the extended 30-day period, indicates that it is not willing to put "skin in the game" as evidence of its *bona fide* intentions. It appears that Canada Inc. is unwilling to fund the costs of a further delay notwithstanding that any successful bid would necessarily have to cover those costs in order to exceed the value of the Stalking Horse Bid.

[76] The above findings remain, in spite of the letter from VanadiumBank Inc., which Canada Inc. filed the day before the hearing.[24] This letter is presented as a new "financing proposal" in favor of Canada Inc. for up to $125M in support of its bid.

[77] Actually, it appears that VanadiumBank was incorporated only a few weeks before the hearing.[25] Notwithstanding its name, it is not a bank. Its offer to Canada Inc. is not to lend funds out of its own pocket, but rather to arrange a loan facility after seeking and obtaining the required financing from third parties in the market.

[78] In other words, with VanadiumBank's proposal, Canada Inc. is nowhere closer to achieving its financial goals before the proposed extended Phase 2 Bid Deadline. The Court therefore gives no weight to VanadiumBank's letter.

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23 Fifth Report, par. 38-41.
24 Exhibit A-11.
25 Exhibit R-14.

[79] It now seems clear that, as it was unable to meet the requirements of the Initial order, Canada Inc. instead decided to launch what could be described as a parallel SISP, which was nowhere authorized and which runs contrary to the letter and spirit of the SISP as ordered by the Court.

[80] Although the Court recognizes Canada Inc. and its representatives' efforts in securing third party financing for their bid, and their belief in the potential of BlackRock's projects to attract new interest as the market evolves, it is time for the SISP to come to an end and for the CCAA proceedings to move forward.

[81] It is advantageous to the stakeholders generally that BlackRock complete the restructuring process as soon as possible in order to, in particular, end the negative narrative surrounding the company, to limit any further uncertainty and risk and facilitate the completion of the financing necessary for Project Volt, if possible.

[82] The SISP provided for a level playing field to all potential bidders. The rules were known to all parties and certain potential bidders might have decided not to participate in the SISP because of its duration (which is often the case in insolvency proceedings). Any modification of the rules after they are set and after all the players have made their choices accordingly should not be taken lightly. In the case at hand, there is no justification whatsoever to such a disruption of the fairness of the process. The overarching remedial objectives of the CCAA are better served by rejecting the Bid Extension Application.

7. RVO APPLICATION

[83] The Court's refusal to further extend the Phase 2 Deadline leaves the Stalking Horse Bid from IQ and Orion as the only Phase 2 Qualified Bid. Pursuant to the RVO Application, the Court shall now turn to the question of whether it should approve the Proposed Transaction as per the terms of his bid and, in particular, BlackRock's restructuration through a reverse vesting order (**RVO**).

7.1 Legal Principles

[84] In assessing the relevant criteria and determining whether the proposed transaction shall be approved, the Court is mindful not to modify the contractual terms that have been duly negotiated between the parties.[26] In this case, it takes the form of a RVO.

[85] RVOs are a fairly new way to achieve the remedial objective of the CCAA: instead of selling the assets of a debtor, a series of transactions will result in i) the purchaser becoming the sole shareholder of a debtor and ii) the unwanted liabilities be vested out

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[26] *Mecachrome Canada Inc. (In the matter of the plan of compromise or arrangement of)* c. *Ernst & Young Inc.*, 2009 QCCS 6355, par. 28.

to a separate entity, thereby ensuring that the purchaser will not inherit the unwanted liabilities.[27]

[86] Albeit new, RVOs have been confirmed by the courts as an appropriate way for a debtor to sell its business when the circumstances justify such structure.[28] In particular, CCAA courts have approved RVO structures in several complex mining transactions and have recognized that their benefits, which include maximizing recovery for creditors, importantly limiting delays and transaction costs, and facilitating the preservation of the insolvent business' going concern, justify the use of this innovative restructuring tool.

[87] In addition to section 11, discussed above, section 36 of the CCAA has been interpreted as providing courts with the jurisdiction and the relevant criteria to issue an RVO:

> **36 (1) [Restriction on disposition of business assets]** A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.
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> **(2) [Notice to creditors]** A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.
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> **(3) [Factors to be considered]** In deciding whether to grant the authorization, the court is to consider, among other things,
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> **(a)** whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
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> **(b)** whether the monitor approved the process leading to the proposed sale or disposition;
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> **(c)** whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
>
> **(d)** the extent to which the creditors were consulted;

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27 Exhibit R-2.

28 See *Arrangement relatif à Nemaska Lithium inc.*, 2020 QCCS 3218, par. 71-79 (leave to appeal dismissed, 2020 QCCA 1488; leave to appeal to SCC dismissed, 2021 CanLII 34999); *Quest University Canada (Re)*, 2020 BCSC 1883, par. 151-172 (leave to appeal dismissed, 2020 BCCA 364); *Clearbeach and Forbes*, 2021 ONSC 5564, par. 24-26; *Harte Gold Corp. (Re)*, 2022 ONSC 653, par. 36-39, 77.

> **(e)** the effects of the proposed sale or disposition on the creditors and other interested parties; and
>
> **(f)** whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.
>
> […]
>
> **(6) [Assets may be disposed of free and clear]** The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.
>
> […] [Emphasis added]

[88] This Court approved an RVO in the face of opposition by a creditor in *Arrangement relatif à Nemaska Lithium inc.*[29]. It was held that section 36 should be interpreted broadly and in accordance with the policy and remedial objectives of the CCAA and the wide discretionary power vested to the supervising judge pursuant to section 11. The Court relied in part on the Supreme Court ruling in *9354-9186 Québec inc. v. Callidus Capital Corp.*[30] It added:

> [52] La *LACC* donne donc au juge surveillant la flexibilité nécessaire pour rendre les ordonnances «indiquées» afin de faciliter la restructuration d'une compagnie insolvable.
>
> [53] La nature des problèmes économiques contemporains commande que des solutions innovatrices soient envisagées et, si elles permettent que les objectifs fondamentaux de la *LACC* soient atteints, au bénéfice de tous, alors elles doivent être entérinées.
>
> […]
>
> [71] Le Tribunal est d'avis que les termes «disposer, notamment par vente, d'actifs hors du cours ordinaire de ses affaires» / «sell or otherwise dispose of assets outside the ordinary course of business» de l'article 36(1) *LACC* permettent un grand éventail d'actes et modes de disposition, incluant, en partie ou en totalité, par voie de «dévolution inversée», une solution innovatrice, à être analysée au cas par cas.
>
> [72] L'article 36(1) *LACC* ne comporte aucune restriction à cet égard.

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29 2020 QCCS 3218 (leave to appeal dismissed, 2020 QCCA 1488; leave to appeal to SCC dismissed, 2021 CanLII 34999).

30 2020 CSC 10.

> [73] Sortir des sentiers battus n'est pas contre-indiqué, au contraire, surtout lorsque cela permet de meilleurs résultats.
>
> [74] D'ailleurs, dans l'Affaire *Callidus*, la Cour suprême mentionne ce qui suit quant au pouvoir discrétionnaire général du Tribunal prévu à l'article 11 *LACC* :
>
> > «[…] le pouvoir conféré par l'art. 11 n'est limité que par les restrictions imposées par la *LACC* elle-même, ainsi que par l'exigence que l'ordonnance soit « indiquée » dans les circonstances.»
>
> [75] Dans la présente affaire, la solution d'une «dévolution inversée», efficace et rapide, n'affecte pas le résultat final pour les créanciers des Débitrices, au contraire, elle l'améliore.
>
> [76] En effet, le maintien des permis, licences et autorisations existants et des contrats essentiels à l'exploitation des entreprises, et l'utilisation possible des divers attributs fiscaux disponibles, ont facilité l'obtention de concessions de la part des Offrants, et confirmées par le Contrôleur, ce qui devrait permettre qu'une distribution plus importante soit éventuellement effectuée au bénéfice des créanciers des Débitrices.

[89] The Court of Appeal refused leave in that case, while noting that some issues raised by the appeal did "appear to qualify as being significant to the practice of insolvency":

> [36] […] This is particularly the case regarding the issue of the scope of authority of the CCAA supervising judge in the context of an order that is not strictly limited to the "sale or disposition of assets" provided for under section 36 (6) CCAA, which, according to the Applicants, results in an outcome that would normally form part of an arrangement subject to prior approval by the creditors. There is also an issue of principle raised regarding the granting of broad third party releases (that are not limited to the transaction itself), outside the confines of an arrangement and without determining their appropriateness and submitting same to the required vote of creditors.[31]

[90] In *Re Quest University Canada*, the Supreme Court of British Columbia cautioned that in the case of an RVO, "the ability of a CCAA court to be innovative and creative is not boundless; as always, the court must exercise its discretion with a view to the statutory objectives and purposes of the CCAA […]."[32] On the other hand, the Court added that "[t]here is no provision in the CCAA that prohibits an RVO structure. As is usually the case in CCAA matters, the court must ensure that any relief is 'appropriate' in the

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[31] *Arrangement relatif à Nemaska Lithium inc.*, 2020 QCCA 1488 (leave to appeal to SCC dismissed, 2021 CanLII 34999).

[32] *Quest University Canada (Re)*, 2020 BCSC 1883, par. 154 (leave to appeal dismissed, 2020 BCCA 364).

circumstances and that all stakeholders are treated as fairly and reasonably 'as the circumstances permit' […]."[33]

[91] Similarly, the Ontario Superior Court of Justice relied on sections 11 and 36 of the CCAA to issue an RVO in *Clearbeach and Forbes*.[34]

[92] An RVO structure was approved most recently by the same court in *Harte Gold Corp*.[35] Although the Court was unconvinced that such an order could rely entirely on section 36 of the *CCAA*, it concluded that its discretion under section 11 was clearly broad enough to encompass it. Furthermore, the criteria set out at paragraph 36(3) provide an analytical framework that could be applied *mutatis mutandis* to an RVO transaction:

> [36] The jurisdiction of the court to issue an RVO is frequently said to arise from s. 11 and s. 36(1) of the CCAA. However, the structure of the transaction employing an RVO typically does not involve the debtor 'selling or otherwise disposing of assets outside the ordinary course of business', as provided in s. 36(1). This is because the RVO structure is really a purchase of shares of the debtor and "vesting out" from the debtor to a new company, of unwanted assets, obligations and liabilities.
>
> [37] I am, therefore, not sure I agree with the analysis which founds jurisdiction to issue an RVO in s. 36(1). But that can be left for another day because I am wholeheartedly in agreement that s. 11, as broadly interpreted in the jurisprudence including, most recently, *Callidus*, clearly provides the court with jurisdiction to issue such an order, provided the discretion available under s. 11 is exercised in accordance with the objects and purposes of the CCAA. And it is for this reason that I also wholeheartedly agree that the analytical framework of s. 36(3) for considering an asset sale transaction, even though s. 36 may not support a standalone basis for jurisdiction in an RVO situation, should be applied, with necessary modifications, to an RVO transaction.[36]

[93] It is true that a Canadian appeal court has yet to rule definitively on the legality of an RVO under the CCAA. This being said, and although the contexts might differ, the Court sees no compelling reason why it should set aside its reasoning in *Nemaska Lithium*.

[94] Even if this type of transaction was not contemplated by section 36 of the CCAA, section 11 could clearly step in as a basis for the Court's jurisdiction. The Supreme Court of Canada recently held that the other provisions of the CCAA, dealing with specific orders which the courts can issue, do not restrict the general language and power of section 11.[37]

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33 *Id.*, par. 157, citing *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, par. 14-15.
34 2021 ONSC 5564, par. 24.
35 2022 ONSC 653.
36 *Harte Gold Corp. (Re)*, 2022 ONSC 653, par. 36-37.
37 *Canada v. Canada North Group Inc.*, 2021 SCC 30, par. 23. See also *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, par. 70.

[95] The Court agrees with the judge in *Harte Gold Corp* that paragraph 36(3), in any event, lays out a useful analytical framework for the issue at bar. These criteria, which are laid out above, should be applied in conjunction with the factors enumerated in *Royal Bank v. Soundair Corp.*:[38]

95.1. "whether sufficient efforts to get the best price have been made and whether the parties acted providently";

95.2. "the efficacy and integrity of the process followed";

95.3. "the interests of the parties"; and

95.4. "whether any unfairness resulted from the process."[39]

[96] The Court also agrees that an RVO structure should remain the exception and not the rule, and should be approved only in the limited circumstances where it constitutes the appropriate remedy.

[97] Some authorities indeed call for caution. For instance, Professor Janis Sarra recently stressed the importance for courts to provide detailed reasons when approving RVOs.[40] Among other things, Professor Sarra reminds us that this type of order deviates significantly from the usual CCAA framework, which is meant to provide all creditors with an opportunity to be heard in the process:

> […] [T]here must be exceptional circumstances for the court to be persuaded to bypass provisions of insolvency legislation aimed at giving both secured and unsecured creditors a meaningful voice/vote in the proceedings, as they are the residual claimants to the value of the debtor's assets during insolvency. […]
>
> […]
>
> The CCAA, particularly in its various amendments over the years, has sought to achieve an appropriate balance between various interests affected by a debtor company's insolvency. Part I sets out the framework of the statute, well-known to practitioners and Canadian courts. It allows for a compromise or arrangement to be proposed between a debtor company and its secured and unsecured creditors, a meeting of the creditors to vote on the plan, and, if a majority in number representing two-thirds in value of the creditors, or the class of creditors, present and voting either in person or by proxy at the meeting, agree to any plan of compromise or arrangement, the plan may be sanctioned by the court and, if so sanctioned, is

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38 1991 CanLII 2727 (Ont. CA); *AbitibiBowater inc. (Arrangement relatif à)*, 2010 QCCS 1742, par. 34-35.

39 See *Arrangement relatif à Nemaska Lithium inc.*, 2020 QCCS 3218, par. 50 (leave to appeal dismissed, 2020 QCCA 1488; leave to appeal to SCC dismissed, 2021 CanLII 34999); *Clearbeach and Forbes*, 2021 ONSC 5564, par. 25.

40 Janis SARRA, "Reverse Vesting Orders – Developing Principles and Guardrails to Inform Judicial Decisions", 2022 CanLIIDocs 431.

> binding. There are specific provisions addressing Crown claims, employees and pensioners, and treatment of equity claims, all designed to balance multiple interests in complex proceedings.
>
> […]
>
> This statutory framework represents a careful balancing of interests and prejudice, and gives voice and vote to the creditors that are the residual claimants to the value of the debtor company. Many of the provisions are aimed at mitigating the imbalance in power that secured creditors have in insolvency proceedings, at least during the period of negotiations for a plan, with a view to maximizing the value of the assets, preserving going-concern value, and protection of employees and the public interest.
>
> It makes sense, therefore, that in any application to bypass this carefully crafted statutory process, the court consider whether there are compelling and exceptional circumstances to justify this extraordinary remedy, even where the RVO is not specifically contested, as the court needs to be satisfied of the integrity of the system and the potential prejudice to creditors and other stakeholders that may not be appearing before it. Reasons are important for stakeholders to understand the benefits and prejudice that may accrue to any particular transaction.[41]

[98] As the Supreme Court of British Columbia held in *Quest University*:

> [171] I do not consider that an RVO structure would be generally employed or approved in a CCAA restructuring to simply rid a debtor of a recalcitrant creditor who may seek to exert leverage through its vote on a plan while furthering its own interests. Clearly, every situation must be considered based on its own facts; different circumstances may dictate different results. A debtor should not seek an RVO structure simply to expedite their desired result without regard to the remedial objectives of the CCAA.[42]
>
> [Emphasis added]

[99] In particular, the following comments made in *Harte Gold Corp* are enlightening:

> [38] Given this context, however, I think it would be wrong to regard employment of the RVO structure in an insolvency situation as the "norm" or something that is routine or ordinary course. Neither the BIA nor the CCAA deal specifically with the use or application of an RVO structure. The judicial authorities approving this approach, while there are now quite a few, do not generally provide much guidance on the positive and negative implications of this restructuring technique or what to look out for. Broader-based commentary and discussion is only now just now starting to emerge. This suggests to me that the RVO should continue to be regarded as an

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41 *Id.*, p. 4, 26. See ss. 4-6 of the CCAA.

42 *Quest University Canada (Re)*, 2020 BCSC 1883, par. 171 (leave to appeal dismissed, 2020 BCCA 364).

> unusual or extraordinary measure; not an approach appropriate in any case merely because it may be more convenient or beneficial for the purchaser. Approval of the use of an RVO structure should, therefore, involve close scrutiny. The Monitor and the court must be diligent in ensuring that the restructuring is fair and reasonable to all parties having regard to the objectives and statutory constraints of the CCAA. This is particularly the case where there is no party with a significant stake in the outcome opposing the use of an RVO structure. The debtor, the purchaser and especially the Monitor, as the court appointed officer overseeing the process and answerable to the court (and in addition to all the usual enquiries and reporting obligations), must be prepared to answer questions such as:
>
> (a) Why is the RVO necessary in this case?
>
> (b) Does the RVO structure produce an economic result at least as favourable as any other viable alternative?
>
> (c) Is any stakeholder worse off under the RVO structure than they would have been under any other viable alternative? and
>
> (d) Does the consideration being paid for the debtor's business reflect the importance and value of the licences and permits (or other intangible assets) being preserved under the RVO structure?
>
> [Emphasis added]

7.2 Discussion on criteria to approve an RVO

[100] The Court will now apply the criteria set out in paragraph 36(3) of the CCAA to the RVO Application, keeping in mind the other relevant factors identified by the case law, and will analyze the appropriateness of the RVO structure in particular.

[101] The process leading to the proposed sale was reasonable in the circumstances (s. 36(3)(a) of the CCAA). As detailed in the Fifth Report, BlackRock and the Monitor have conducted the SISP in accordance with the Bidding Procedures approved by this Court on January 7, 2022. The market has been adequately canvassed through a fulsome, fair and transparent process. It should be reiterated that BlackRock had already deployed a global search for financing during the years leading up to the initiation of the CCAA Proceedings, to no avail.

[102] In the present circumstances, the Court concludes that sufficient efforts have been made to get the best price for BlackRock's assets and that the parties acted providently. The record also shows the efficacy and integrity of the process followed.

[103] The Monitor approved of the process leading to the proposed sale and filed with the court a report stating that in their opinion the sale would be more beneficial to the creditors than a sale or disposition under a bankruptcy (s. 36(3)(a) and (b) of the CCAA).

The Monitor not only approved the SISP but also participated in the negotiation and development of the Bidding Procedures and had primary carriage of the process throughout. In the course of the SISP, the Monitor consulted with BlackRock.

[104] The Fifth Report concludes that the SISP was properly conducted and that the Proposed Transaction is beneficial for all the stakeholders compared to a bankruptcy scenario. The Monitor "is of the view that creditors who will suffer a shortfall following the Purchase Agreement would not obtain any greater recovery in a sale in bankruptcy." "Furthermore, bankruptcy proceedings would: (i) [c]ause additional delays and uncertainty in the sale of [BlackRock]'s assets; (ii) [j]eopardize the going concern operations of [BlackRock]; and, (iii) [l]ikely result in employees to be unemployed."[43]

[105] BlackRock's creditors were duly consulted (s. 36(3)(d) of the CCAA). The secured creditors of BlackRock are Orion and IQ who are also the Stalking Horse Bidders. Obviously, they have been consulted extensively and they consent to the RVO Application.

[106] Importantly, the Grand Council of the Crees (Eeyou Istchee) and the Cree Nation Government also expressed support for the Proposed Transaction, as outlined by their counsel in a letter sent to the Monitor on May 19, 2022:

> Our clients consider that the approval of the Stalking Horse Agreement offers the most, and perhaps the only, viable prospect to bring the BlackRock Mining Project into successful commercial operation and hence to secure for the Cree Nation of Eeyou Istchee the critically important benefits of the BallyHusky Agreement.[44]

[107] The other creditors are unsecured creditors who have been duly advised of the Initial Application and Order, including the Bidding Procedures. They have decided not to participate in the SISP and nothing indicates that they would oppose to the RVO Application.

[108] The effects of the proposed sale or disposition on the creditors and other interested parties are beneficial overall (s. 36(3)(e) of the CCAA). The Stalking Horse Bid is the best available alternative for BlackRock's creditors and other interested parties and should allow for BlackRock to emerge as a rehabilitated business in a stronger position to complete the Construction Financing and move forward with Project Volt. This outcome is advantageous to BlackRock and its stakeholders, including their creditors, employees, trading partners and First Nations partners.

[109] It is true that the RVO will result in the claim of unsecured creditors being transferred to ResidualCo, an empty shell where all unassumed liabilities will be transferred. This transfer simply reflects the fact that the BlackRock's value, as tested in

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43 Fifth Report, par. 57-60.

44 Exhibit R-11.

the market through the SISP and for many years prior to the current restructuring, is not high enough to generate value for these unsecured creditors.

[110] As for the other stakeholders, they will benefit on the whole from the approval of the Proposed Transaction, as it will allow the Debtors' business to emerge in a position to move forward as a going concern. This will benefit the employees, trading partners and First Nations partners and it will have indirect socio-economic benefits in the province of Quebec.

[111] The consideration to be received for the assets is reasonable and fair, taking into account their market value (s. 36(3)(f) of the *CCAA*). The consideration being paid by Orion and IQ, which is in excess of $100M, is importantly linked to the preservation the Debtor's permits (crucial to the conduct of the contemplated mining activities), certain existing contracts and its tax attributes.

[112] The reasonableness of the consideration is well established. Given the amount of the secured debt held by Orion and IQ, the consideration which they will pay exceeds i) what the market would be willing to pay to inherit intangible assets BlackRock has been able to build over time and ii) the capacity to raise on the market the financing required for Project Volt.

[113] Nobody submitted a higher bid after extensive attempts to raise financing over many years.

[114] Exceptionally, the RVO structure is appropriate in the circumstances. In his Fifth Report, the Monitor outlines the reasons why, in his opinion, the reverse vesting order structure that would be implemented would be "more appropriate and beneficial than a traditional vesting order structure and that the reverse vesting order structure is necessary, reasonable and justified in the circumstances":[45]

> (i) Numerous agreements, permits, licenses, authorizations, and related amendments are part of the assets that have to be transferred as per the Purchase Agreements. It could be more complex to transfer the benefits of these assets in a traditional vesting order structure since consents, approvals or authorizations may be required. A reverse vesting order structure minimizes risks, costs or delays of having these assets transferred;
>
> (ii) The proposed reverse vesting order structure results in better economic results for some creditors of BRM who see their pre-filing claim being assumed and retained. Also, the reverse vesting order structure will avoid any delays or costs associated with the assignments of the assumed contracts;

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[45] Fifth Report, par. 65-66.

(iii) The contracts or obligations of the creditors and the stakeholders that are considered Excluded Assets and Excluded Obligations according to Schedule B of the Purchase Agreement will not be in a worse position than they would have been with a more traditional vesting of assets to a third party;

(iv) Most assets of BRM are intangibles, such as agreements, permits, licenses, authorizations and related amendments, and their value depend on the capacity of the purchasers to complete the financing and achieve the project. These assets would have no or limited value if some of them were not being preserved. The reverse vesting order structure allows to avoid any potential risks around the transfer to the purchaser.

[115] The Court agrees with the Monitor's conclusions. RVO structures have been found by courts to be appropriate in situations such as the present case, where a traditional sale of assets would lead to uncertainty regarding the transfer of numerous agreements, permits, authorizations and other regulatory approvals that are required for the continuation of a company's business.[46]

[116] Indeed, BlackRock operates in the highly regulated mining industry. Their business is almost entirely constituted of such intangible assets, which provide a head start of several years to the purchaser. Some of these assets cannot be assigned or are at least difficult to assign. Therefore, the capacity to restructure BlackRock depends heavily on the capacity to keep the existing legal entities in place while restructuring the share-capital of BlackRock. That is exactly what the RVO provides for.

[117] If BlackRock was forced to proceed with a traditional asset sale, it could significantly increase the costs, generate uncertainties and reduce the value its assets, to the detriment of all parties involved.

[118] Moreover, despite the Intervenors' firm belief, the SISP has unequivocally demonstrated that there is no realizable value in BlackRock's business or assets beyond the secured debt of IQ and Orion, such that there is no equity left for its unsecured creditors, let alone its shareholders.

[119] The Court adds that Shareholders have little or no say in CCAA proceedings like the present one, where the debtor company is insolvent and its shares have lost all value. This goes to their legal interest in contesting an arrangement or transaction proposed by the company.[47]

[120] In any case, the shareholders and unsecured creditors of BlackRock are not in a worse position with an RVO than they would be under a traditional asset sale. Either way,

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46 See *supra*, note 28.

47 *Proposition de Peloton Pharmaceutiques inc.*, 2017 QCCS 1165, par. 65-78; *Forest c. Raymor Industries inc.*, 2010 QCCA 578, par. 4-6; *Stelco Inc., Re*, 2006 CanLII 1773, par. 18 (Ont. SC).

they would have no economic interest because the purchase price paid would not generate any value for the unsecured creditors (and even less so for the shareholders).

[121] This is consistent with the conclusions of the Ontario Superior Court of Justice in *Harte Gold Corp.*:

> [59] Because the transaction contemplates the cancellation of all existing shares and related rights in Harte Gold and the issue of new shares to the purchaser, the existing shareholders of Harte Gold will receive no recovery on their investment. Being a public company, Harte Gold has issued material change notices as the events described above were unfolding. By the time of the commencement of the CCAA proceedings, the shareholders had been advised in no uncertain terms that there was no prospect of shareholders realizing any value for their equity investment.
>
> [60] The evidence of Harte's financial problems and balance sheet insolvency, the unsuccessful prefiling strategic review process, and the hard reality that the only parties willing to bid anything for Harte Gold were the holders of secured debt (and only for, effectively, the value of the secured debt plus carrying and process costs) only serves to emphasize that equity holders will not see, and on any other realistic scenario would not see, any recovery of their equity investment in Harte Gold.
>
> [61] Under s. 186(1) of the OBCA, "reorganization" includes a court order made under the Bankruptcy and Insolvency Act or an order made under the Companies Creditors Arrangement Act approving a proposal. While the term "proposal" is unfortunate (because there are no formal "proposals" under the CCAA), I view the use of this term in the non-technical sense of the word; that is, as encompassing any proposal such as the proposed transaction brought forward for the approval of the Court under the provisions of the CCAA in this case.
>
> [62] Section 186(2) of the OBCA provides that if a corporation is subject to a reorganization, its articles may be amended by the court order to effect any change that might lawfully be made by an amendment under s. 168. Section 168(1)(g) provides that a corporation may from time to time amend its articles to add, change or remove any provision that is set out in its articles, including to change the designation of all or any of its shares, and add, change or remove any rights, privileges, restrictions and conditions, including rights to accrued dividends, in respect of all or any of its shares. This provides the jurisdiction of the court to approve the cancellation of all outstanding shares and the issuance of new shares to the purchaser.
>
> […]
>
> [64] […] In circumstances like Harte Gold's, where the shareholders have no economic interest, present or future, it would be unnecessary and, indeed,

> inappropriate to require a vote of the shareholders […]. The order requested for the cancellation of existing shares is, for these reasons, justified in the circumstances.[48]
>
> [Emphasis added]

[122] In particular, paragraphs 61 and 62 of the above excerpt answer the Intervenors' argument about the jurisdiction of the Court to cancel their shares under *the Canada Business Corporations Act*[49] (**CBCA**). The same logic applies with sections 173 and 191 of that statute. The power to cancel and issue shares in the context of an RVO is captures by the possibility for an court order to "change the designation of all or any of [the corporation's] shares, and add, change or remove any rights, privileges, restrictions and conditions […] in respect of all or any of its shares, whether issued or unissued", pursuant to 191(2) and 173(1)(g) of the CBCA.

[123] It should also be noted that the Intervenors' opposition to the RVO structure in particular appears to be new. Canada Inc.'s non-binding LOI had already conceded on March 9, 2022 that its proposed bid could itself "take the form of a reverse vesting order".[50] Ultimately, it seems that the Intervenors are not objecting to the use of an RVO *per se*, but only to the extinguishment of their equity interests, which would occur irrespective of the use of an RVO structure or of a traditional vesting order.

[124] Therefore, the fact that the transaction is structured as an RVO only has benefits and does not prejudice any of the stakeholders. The Court finds that in the specific circumstances of the present case, the proposed RVO is an appropriate arrangement.

7.3 Discussion on the releases

[125] The Proposed Transaction contemplates releases for various parties, including Orion and IQ, from all claims relating to, in particular, BlackRock, its restructuring or the Proposed Transaction.

[126] While the Intervenors do not object to a release being granted to BlackRock directors or to the Monitor, they argue that Orion and IQ's actions constitute an abuse of both their rights as shareholders and of the CCAA process. Thus, the effect of the requested releases in favour of Orion and IQ would be to dismiss the Intervenors' potential claims without the benefit of hearing any evidence allowing for the determination of their potential liability.

[127] For the reasons below, the Court holds that the releases in favor of Orion and IQ will form part of the Proposed Transaction.

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48 *Harte Gold Corp. (Re)*, 2022 ONSC 653, par. 59-64.
49 R.S.C. 1985, c. C-44.
50 Exhibit A-2.

[128] It is now commonplace for third-party releases, in favor of parties to a restructuring, their professional advisors as well as their directors, officers and others, to be approved outside of a plan in the context of a transaction.[51] In fact, similar releases have been approved by this Court in recent cases involving RVO transactions, including in *Nemaska Lithium*.[52]

[129] This being said, the courts should not grant releases blindly and systematically.

[130] In *Harte Gold Corp.,* the Court approved releases in favor of various parties that included the purchaser and its directors and officers and considered the criteria ordinarily canvassed with respect to third-party releases provided for under a plan, as articulated in *Re Lydian International Limited*[53] and elsewhere[54]. They are the following:

a) Whether the parties to be released from claims were necessary and essential to the restructuring of the debtor;

b) Whether the claims to be released were rationally connected to the purpose of the plan and necessary for it;

c) Whether the plan could succeed without the releases;

d) Whether the parties being released were contributing to the plan; and

e) Whether the release benefitted the debtors as well as the creditors generally.[55]

[131] In the present file, IQ's and Orion's participation was obviously instrumental to the restructuring of BlackRock's business. Considering the SISP and the opportunity given to BlackRock's stakeholders to participate in the process, it is reasonable for IQ and Orion to now start with a clean slate and not to be under the threat of potential claims as they will be leading BlackRock's efforts with Project Volt. The release will provide more certainty and finality.

[132] The release is thus reasonably connected and justified as part of the Proposed Transaction,[56] and it is to the benefit of BlackRock and its stakeholders generally as it will allow BlackRock to emerge as a solvent entity and be in the best possible position to,

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51 See *Re Green Relief Inc.*, 2020 ONSC 6837, par. 23-25; *8640025 Canada Inc. (Re)*, 2021 BCSC 1826, par. 43.

52 *Arrangement relatif à Nemaska Lithium inc.*, 2020 QCCS 3218, par. 103-106 (leave to appeal dismissed, 2020 QCCA 1488; leave to appeal to SCC dismissed, 2021 CanLII 34999).

53 2020 ONSC 4006.

54 *Harte Gold Corp. (Re)*, 2022 ONSC 653, par. 78-86. See also *Re Green Relief Inc.*, 2020 ONSC 6837, par. 27-28.

55 *Re Lydian International Limited*, 2020 ONSC 4006, par. 54. See also: *Metcalfe & Mansfield Alternative Investments II Cord. (Re)*, 2008 ONCA 587;

56 See *Metcalfe & Mansfield Alternative Investments II Corp. (Re)*, 2008 ONCA 587, par. 70 (leave to appeal to SCC dismissed, 2008 CanLII 46997).

hopefully, secure financing for Project Volt. They are also fair and reasonable in the present circumstances.

[133] The eventual claims for which Orion and IQ should not be released, according to the Intervenors, are based on allegations of abuse related solely to Orion's and IQ's Stalking Horse Bid and their conduct during the SISP.

[134] The Court was sensitive to the shareholders' submissions initially and extended the SISP delays to ensure that the process was as fulsome and fair as possible. Still, and in spite of all the efforts made over the years, IQ and Orion remain the only entities who are ready to take over the development of BlackRock and to further invest in same.

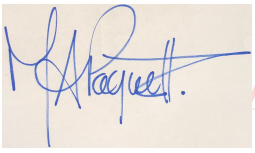
[135] In the process leading to the Bidding Procedures Order, to the refusal of the Bid Extension Application and to the approval of the Proposed Transaction (Reverse RVO), the Court was able to appreciate the context leading up to the final outcome ordered as per the present judgment and also found the Proposed Transaction, as proposed by Orion and IQ, to be fair and reasonable. The Court sees little to no room for a finding of abuse in the events leading to the CCAA proceedings, to the SISP or to the approved transaction.

[136] To the contrary, there is no good reason to leave the door open to the Intervenors' potential claims against Orion and IQ, to BlackRock's detriment.

[137] Therefore, the release provided for in the Proposed Transaction will be granted.

FOR THESE REASONS, THE COURT:

[138] **DECIDES** in accordance with the attached orders.



Signature numérique de Marie-Anne Paquette
Date : 2022.07.13 17:01:45 -04'00'

MARIE-ANNE PAQUETTE, Chief Justice

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Attorneys For The Grand Council Of The Crees And The Cree Nation Government

Me Gilles Robert
Me Kloé Sévigny
MINISTÈRE DE LA JUSTICE DU CANADA
Attorneys For The Canada Revenue Agency

Hearing dates: May 30, 31, 2022

SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-11- 060598-212

DATE: June 1, 2022

BY THE HONOURABLE MARIE-ANNE PAQUETTE, J.S.C.

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36 OF:

BLACKROCK METALS INC.
BLACKROCK MINING INC.
BRM METALS GP INC.
BLACKROCK METALS LP.
Debtors
-and-

DELOITTE RESTRUCTURING INC.
Monitor
-and-

INVESTISSEMENT QUÉBEC
OMF FUND II H LTD.
Secured Creditors
-and-

13482332 CANADA INC.
Shareholder Bidder
-and-

WINNER WORLD HOLDINGS LIMITED
4470524 CANADA INC.
GOLDEN SURPLUS TRADING
PROSPERITY STEEL
Intervenors

JP2056

ORDERS (REASONS TO FOLLOW) (Rectified to include schedules)

ON THE AMENDED SHAREHOLDER BIDDER'S APPLICATION TO EXTEND THE PHASE 2 BID DEADLINE (SEQ. 23)
AND
ON THE DEBTORS' APPLICATION TO APPROVE A VESTING ORDER (SEQ. 17)

CONSIDERING THE FOLLOWING:

[1] the two applications mentioned above;

[2] the Court has made a decision, based on the materials submitted in support and in contestation of such applications, both at the hearing and in advance of same;

[3] however, given the time constraints, the next steps for the implementation of the transaction and the financial implications of additional delays, the Court decides to issue the orders immediately, with reasons to follow; the latter which will follow as quickly as feasible;

FOR THESE REASONS, THE COURT:

1. <u>AMENDED SHAREHOLDER BIDDER'S APPLICATION TO EXTEND THE PHASE 2 BID DEADLINE (SEQ. 23)</u>

[4] DISMISSES the Application;

[5] WITH COSTS

2. <u>DEBTORS' APPLICATION TO APPROVE A VESTING ORDER (SEQ. 17)</u>

[6] **GRANTS** the Application;

[7] **DISMISSES** the Intervenor's Opposition to the Application;

[8] **ORDERS** that, unless otherwise indicated or defined herein, capitalized terms used in this Order shall have the meanings given to them in the Purchase Agreement, as such agreement may be amended and restated from time to time.

<u>PURCHASE AGREEMENT</u>

[9] **AUTHORIZES** and **APPROVES** the Transactions and the entering into and execution by the Applicants (including, as applicable pursuant to the present Order, New ParentCo and an entity incorporated or to be incorporated pursuant to the Reorganization and defined in the Steps Memorandum as "**ResidualCo**") of the Purchase Agreement and the completion of the Transactions, with such alterations,

changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Monitor.

[10] **ORDERS** and **DECLARES** that, notwithstanding any provision hereof, the steps pertaining to the Closing of the Transactions, including all those steps described in the Steps Memorandum, shall be deemed to occur in the manner, order and sequence specified in Purchase Agreement and the Steps Memorandum, with such alterations, changes, amendments, deletions or additions thereto as are permitted under the Purchase Agreement or as may otherwise be agreed to by the Vendor and the Purchasers with the consent of the Monitor, and that the Monitor shall post any amended Steps Memorandum on the Monitor's website forthwith following agreement in respect of same.

[11] **REORGANIZATION**

[12] **AUTHORIZES** and **ORDERS** the Applicants to implement and complete the Reorganization contemplated in the Steps Memorandum, including notably:

a) upon the issuance of the present Order: **(i)** the incorporation by BlackRock Metals Inc. ("**BRMI**") of New ParentCo under the *Quebec Business Corporations Act* ("**QBCA**"), with authorized share capital consisting of a class of voting and fully participating common shares, and a class of non-participating redeemable and retractable voting shares (the "**Voting Shares**"), and the subscription by BRMI for one Voting Share, which will not be immediately paid; and **(ii)** the incorporation by BRMI of ResidualCo under the QBCA, with authorized share capital consisting of a class of voting and fully participating common shares, and the subscription by New ParentCo for one common share of ResidualCo, which will not be immediately paid;

b) the addition of New ParentCo and ResidualCo as Applicants under the CCAA in accordance with paragraph [28] of the present Order;

c) on the date that is one (1) business day before the Closing Date: **(i)** the exchange of all of the issued shares of BRMI for common shares of New ParentCo on a one-for-one basis, such that, as a consequence, New ParentCo will thereafter hold all of the then issued and outstanding shares in the capital of BRMI, and **(ii)** the simultaneous cancellation of the Voting Share held by BRMI for its subscription price, and the cancellation, for no consideration, of all of the issued and outstanding options and warrants or any other securities of BRMI (including securities convertible or exchangeable for shares of BRMI);

d) the various transfers and assumptions of assets and liabilities between BRMI, BlackRock Mining inc. ("**BRM Mining**"), BRM Metals GP inc. ("**BRM GP**"), BlackRock Metals LP ("**BRM LP**") and New ParentCo and ResidualCo, which are to take place in the manner, at the times and for the consideration set forth in the Steps Memorandum and the agreements giving effect thereto, prior to the closing of the Purchase and Sale Transactions;

[13] **AUTHORIZES** the Applicants to:

a) take, proceed with, implement and execute any and all other steps, notifications, filings and delivery of any documents and assurances governing or giving effect to the Reorganization as the Applicants may deem to be reasonably necessary or advisable to conclude the Reorganization, including the execution of such deeds, contracts or documents contemplated in the Steps Memorandum and all such deeds, contracts or documents are hereby ratified, approved and confirmed; and

b) take such steps as are deemed necessary or incidental to the implementation of the Reorganization.

[14] **ORDERS** and **DECLARES** that the Applicants are hereby permitted to execute and file articles of amendment, amalgamation, continuance or reorganization or such other documents or instruments as may be required to permit or enable and effect the Transactions and that such articles, documents or other instruments shall be deemed to be duly authorized, valid and effective notwithstanding any requirement under federal, provincial or territorial law to obtain director or shareholder approval with respect to such actions or to deliver any statutory declarations that may otherwise be required under corporate law to effect the Transactions.

[15] **ORDERS** and **DECLARES** that this Order shall constitute the only authorization required by the Applicants and the Vendor to proceed with the Transactions notwithstanding any requirement under applicable law to obtain director, shareholder, partner, member or other approval with respect thereto or to delivery any statutory declarations that may otherwise be required under corporate, partnership or other law, and, for greater certainty, no director, shareholder, contractual or regulatory approval shall be required in connection with any of the steps contemplated pursuant to the Transactions.

[16] **ORDERS** the Director appointed pursuant to section 260 of the CBCA to accept and receive any articles of amendment, amalgamation, continuance or reorganization or such other documents or instruments as may be required to permit or enable and effect the Transactions, filed by any of the Applicants pursuant to or to give effect to the Transactions, as the case may be.

[17] **ORDERS** the *Enterprise Register* pursuant to the QBCA to accept and receive any articles of amendment, amalgamation, continuance or reorganization or such other documents or instruments as may be required to permit or enable and effect the Transactions, filed by any of the Applicants pursuant to or to give effect to the Transactions, as the case may be.

SALE APPROVAL

[18] **AUTHORIZES** and **ORDERS** the Applicants, the Vendor, and the Monitor, as the case may be, to perform all acts, sign all documents and take any necessary action to

execute any agreement, contract, deed, provision, transaction or undertaking stipulated in the Purchase Agreement with such alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Monitor and any other ancillary document that may be required to give full and complete effect thereto and to implement the Transactions.

[19] **ORDERS** and **DIRECTS** the Monitor to: (i) issue and deliver to the Purchaser and to file with this Court a certificate substantially in the form appended as **Schedule "B"** hereto (the "**Certificate**") as soon as practicable upon the closing of the Purchase and Sale Transactions; and (ii) file with the Court a copy of the Certificate, no later than one business day after the issuance thereof.

[20] **ORDERS** and **DECLARES** that upon the earlier of the issuance and delivery of the Certificate to the Purchaser and the filing of the Certificate with the Court (the "**Effective Time**"), all right, title and interest in and to the Purchased Shares shall vest, effective at the Closing Time (as this term is defined in the Purchase Agreement), absolutely and exclusively in and with the Purchaser, free and clear of and from any and all claims, Liabilities (direct, indirect, absolute or contingent), obligations, taxes, prior claims, right of retention, liens, royalties or any similar claim based on the extraction of minerals, security interests, charges, hypothecs, trusts, deemed trusts (statutory or otherwise), judgments, writs of seizure or execution, notices of sale, contractual rights (including purchase options, rights of first refusal, rights of first offer or any other pre-emptive contractual rights), encumbrances, whether or not they have been registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Encumbrances**"), including without limiting the generality of the foregoing, all Encumbrances created by order of this Court and all charges or security evidenced by registration, publication or filing pursuant to the *Civil Code of Québec* in movable / immovable property, and for greater certainty **ORDERS** that all of the Encumbrances affecting or relating to the Purchased Shares be cancelled and discharged as against the Purchased Shares, in each case effective as of the Effective Time.

[21] **ORDERS and DECLARES** upon issuance of the Certificate and effective prior to the Closing Time, any agreement, contract, plan, indenture, deed, certificate, subscription rights, conversion rights, pre emptive rights, options (including stock option or share purchase or equivalent plans and any rights under employment agreements or other agreements to awards under any such plan), share units (including restricted share unit or deferred share unit or similar incentive plans and any rights under employment agreements or other agreements to awards under any such plan), or other documents or instruments governing and/or having been created or granted in connection with the Purchased Shares and/or the share capital of BRMI that were existing prior to the Reorganization, if any, shall be deemed terminated and cancelled for no consideration.

[22] **ORDERS** the Land Registrar of the Land Registry Office for the Registry Division of Lac-Saint-Jean-Ouest and the Registrar of the Public Register of Real and Immovable

Mining Rights (known as GESTIM Plus), upon presentation of the Certificate and a certified copy of this Order accompanied by the required application for registration and upon payment of the prescribed fees, to publish this Order and cancel the Encumbrances listed in **Schedule** "**C**" hereto on the immovable properties identified therein.

[23] **ORDERS** the registrar of the Québec Register of Personal and Movable Real Rights, upon presentation of the required form with a true copy of this Order and the Certificate, to cancel and strike the registrations of the hypothecs listed in **Schedule** "**C**" hereto

[24] **ORDERS** and **DECLARES** that any distributions, disbursements or payments made under this Order, including, for greater certainty, pursuant to the Transactions, shall not constitute a "distribution" by any Person for the purposes of section 107 of the *Corporations Tax Act* (Ontario), section 22 of the *Retail Sales Tax Act* (Ontario), section 117 of the *Taxation Act*, 2007 (Ontario), section 34 of the *Income Tax Act* (British Columbia), section 104 of the *Social Service Tax Act* (British Columbia), section 49 of the *Alberta Corporate Tax Act*, section 22 of the *Income Tax Act* (Manitoba), section 73 of *The Tax Administration and Miscellaneous Taxes Act* (Manitoba), section 14 of the *Tax Administration Act* (Québec), section 85 of *The Income Tax Act*, 2000 (Saskatchewan), section 48 of *The Revenue and Financial Services Act* (Saskatchewan), section 56 of the *Income Tax Act* (Nova Scotia), or any other applicable similar provincial, and/or territorial tax legislation (collectively, the "**Tax Statutes**"), and the Purchaser, the Vendor and the Applicants in making any such distributions, disbursements or payments, as applicable, is merely a disbursing agent under this Order, including, for greater certainty, pursuant to the Transactions, and is not exercising any discretion in making such payments and no Person is "distributing" such funds for the purpose of the Tax Statutes, and the Purchaser, the Vendor and the Applicants and any other Person shall not incur any liability under the Tax Statutes in respect of distributions, disbursements or payments made by it and the Purchaser, the Vendor and the Applicants and any other Person is hereby forever released, remised and discharged from any claims against it under or pursuant to the Tax Statutes or otherwise at law, arising in respect of or as a result of distributions, disbursements or payments made by it in accordance with this Order, including, for greater certainty, pursuant to the Transactions, and any claims of this nature are hereby forever barred.

[25] **ORDERS** and **DECLARES** that at the Effective Time, the Purchaser and the Applicants (other than New ParentCo and ResidualCo) shall be released from any and all claims, Liabilities (direct, indirect, absolute or contingent) or obligations with respect to any Taxes (including penalties and interest thereon) of, or that relate to the Applicants (including, without limiting the generality of the foregoing all Taxes that could be assessed against the Purchaser, the Vendor and the Applicants (including any predecessor corporations) pursuant to section 14.4 of the *Tax Administration Act* (Québec), and/or any similar applicable provisions of the other Tax Statutes in connection with the Vendor or the Applicants).

[26] **ORDERS** and **DECLARES** that at the Effective Time, all Persons shall be deemed to have waived any and all defaults of the Applicants then existing or previously committed by the Applicants or caused by the Applicants, directly or indirectly, as a result of any circumstances that existed or event that occurred on or prior the Effective Date that would have entitled any such Person to enforce any rights or remedies, including a non-compliance with any covenant, positive or negative pledge, warranty, representation, term, provision, condition or obligation, express or implied, in any contract, credit document, agreement for sale, lease or other agreement, written or oral, and any and all amendments or supplements thereto, existing between such Person and the Applicants arising from the insolvency of the Applicants, the filing by the Applicants under the CCAA, the completion of the Transactions, any and all notices of default and demands for payment under any instrument, including any guarantee arising from such default, shall be deemed to have been rescinded.

[27] **ORDERS** and **DECLARES** that the implementation of the Transactions shall be deemed not to constitute a change in ownership or change in control under any agreement, including without limiting the foregoing, any financial instrument, loan or financing agreement, executory contract or unexpired lease or contract, lease, employment agreements, permits and licences in existence on the Closing Date and to which any of the Applicants is a party.

[28] **DECLARES** that at the Effective Time, the Purchase and Sale Transactions shall be deemed to constitute and shall have the same effect as a sale under judicial authority as per the provisions of the Code of Civil Procedure and a forced sale as per the provisions of the *Civil Code of Québec*.

CCAA APPLICANTS

[29] **ORDERS**, with effect upon the later of the making of this Order and the incorporation of each of New ParentCo and ResidualCo, as applicable, that:

a) ResidualCo and New ParentCo are companies to which the CCAA applies;

b) ResidualCo and New ParentCo shall be automatically added as Applicants in these CCAA proceedings and any reference in any Order of this Court in respect of these CCAA proceedings to a “Debtor” or the “Applicants” – including any such reference in this Order – shall include ResidualCo and New ParentCo, *mutadis mutandis*, and, for greater certainty, each of the CCAA Charges (as such term is defined in the initial order issued by this Court in the present matter on December 23, 2021, as extended, amended and restated since (the “**Initial Order**”)) shall also constitute a charge on the property of ResidualCo and New ParentCo;

c) the CCAA proceedings of ResidualCo and New ParentCo and those of the other Applicants are consolidated under this single Court file, bearing file number 500-11-060598-212; and

d) the consolidation of these CCAA proceedings in respect of ResidualCo and New ParentCo shall be for administrative purposes only and shall not effect a consolidation of the assets and property or of the debts and obligations of each of the Applicants.

[30] **ORDERS** that at the Effective Time:

a) the Applicants other than ResidualCo and New ParentCo shall each cease to be Applicants in these CCAA proceedings, and each such entity shall be released from the purview of any Order of this Court granted in respect of these CCAA proceedings, save and except for the present Order, the terms of which (as they relate to any such entity) shall continue to apply in all respects.

[31] **ORDERS** and **DECLARES** that upon issuance of the Certificate and effective prior to the Closing Time, at the times indicated and in the manner set forth in the Reorganization and the documents giving effect thereto:

a) an amount of $37,500 in cash of BRMI shall vest absolutely and exclusively, at the times provided for in the Reorganization and before the Closing Time, in New ParentCo, in exchange for the BRMI Note (as this term is defined in the Steps Memorandum);

b) all Excluded Assets, except for the BRMI Note, shall vest absolutely and exclusively in ResidualCo in exchange the ResidualCo Notes (as this term is defined in the Steps Memorandum), and all Encumbrances shall continue to attach to the Excluded Assets with the same nature and priority as they had immediately prior to their transfer in each case;

c) BRMI, BRM Mining, BRM GP and BRM LP (collectively, the "**BlackRock Entities**") shall each own and hold respectively, to the exclusion of all other Persons, free and clear of and from any Encumbrances, except the permitted encumbrances listed on **Schedule** "**D**" hereto (the "**Permitted Encumbrances**"), all right, title and interest in and to all assets and properties that were owned by each of them respectively, other than the Excluded Assets;

d) all debts, liabilities, taxes, obligations, indebtedness, contracts, leases, agreements, and undertakings of any kind or nature whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) of each of the BRM Entities and their predecessors, whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in

law or equity and whether based in statute or otherwise (collectively, "**Obligations**") other than the Assumed Obligations (all such Obligations being "**Excluded Obligations**") shall be transferred to, assumed by and vest absolutely and exclusively in New ParentCo, in consideration for the ResidualCo Notes and the BRMI Note which shall also be transferred and vest absolutely and exclusively in New ParentCo, the whole such that, at the times provided for in the Reorganization and before the Closing Time, the Excluded Obligations shall be novated in each case and become obligations of New ParentCo and not obligations of the BlackRock Entities, and the BlackRock Entities shall be forever released and discharged from such Excluded Obligations, and all Encumbrances securing Excluded Obligations shall be forever released and discharged, it being understood that nothing in the present Order shall be deemed to cancel any of the Permitted Encumbrances, as applicable to the BlackRock Entities;

e) the commencement or prosecution, whether directly, indirectly, derivatively or otherwise of any demands, claims, actions, counterclaims, suits, judgments, or other remedy or recovery with respect to any indebtedness, liability, obligation or cause of action against the Applicants (other than New ParentCo and ResidualCo) or the Purchasers (including any successor corporation) in respect of the Excluded Obligations shall be permanently enjoined and barred;

f) the Assumed Liabilities including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of the Purchase Agreement or the steps and actions taken in accordance with the terms thereof;

g) any Person that, prior to the Closing Date, had a valid right or claim against the Applicants (other than New ParentCo and ResidualCo) in respect of the Excluded Obligations (each a "**Claim**") shall no longer have such Claim against any of them or against the BlackRock Entities (including any successor corporation), but will have an equivalent Claim against New ParentCo in respect of the Excluded Obligations from and after the Closing Time in its place and stead, with the same attributes and rights resulting from existing defaults of the Applicants and nothing in this Order limits, lessens, modify (other than by change of debtor) or extinguishes the Excluded Obligations or the Claim of any Person as against New ParentCo which shall be the sole and exclusive debtor of the Claim.

AMENDMENT AND RESTATEMENT OF THE INITIAL ORDER

[32] **ORDERS** and **DECLARES** that the Initial Order shall be amended by:

a) adding ResidualCo and New ParentCo as Applicants in the heading;

b) adding, after subparagraph [41](l), the following subparagraph:

(l.1) may act on behalf and in the name of any of ResidualCo and New ParentCo;

[33] **ORDERS** and **DECLARES** that at the Effective Time the Initial Order shall be amended by:

a) deleting “BlackRock Metals Inc.”, “BlackRock Mining Inc.”, “BRM Metals GP Inc.”, and “BlackRock Metals LP” from the heading;

b) deleting the residual clause of paragraph [46]**ORDERS** that forthwith at the Effective Time, the Initial Order shall be restated to reflect the amendments made by paragraphs [31] and [32] hereof.

RELEASES

[34] **ORDERS** that effective at the Effective Time, (i) the present and former directors, officers, employees, legal counsel and advisors of the Applicants (including for purpose of clarity New ParentCo and ResidualCo, (ii) the Monitor and its legal counsel, and (iii) Orion and IQ, including in each case their respective directors, officers, employees, legal counsel and advisors (the Persons listed in (i), (ii) and (iii) being collectively, the “**Released Parties**”) shall be deemed to be forever irrevocably released and discharged from any and all present and future claims whatsoever (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, offer, investment proposal, dealing or other occurrence existing or taking place prior to the Effective Time or completed pursuant to the terms of this Order and/or in connection with the Transactions, in respect of the Applicants or their assets, business or affairs, or prior dealings with Applicants, wherever or however conducted or governed, the administration and/or management of the Applicants and these proceedings (collectively, the “**Released Claims**”), which Released Claims are hereby fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, and are not vested nor transferred to ResidualCo or to any other entity, provided that nothing in this paragraph shall waive, discharge, release, cancel or bar any claim against the Directors (as this term is defined in the Initial Order) of the Applicants that is not permitted to be released pursuant to section 5.1(2) of the CCAA.

[35] **ORDERS** that, notwithstanding:

a) the pendency of these proceedings;

b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") in respect of the Applicants (including New ParentCo or ResidualCo) and any bankruptcy order issued pursuant to any such application; and

c) any assignment in bankruptcy made in respect of the Applicants (including New ParentCo or ResidualCo),

the implementation of the Transactions, including the transfer of the Excluded Assets to ResidualCo and the implementation of the Purchase and Sale Transactions under and pursuant to the Purchase Agreement, (i) shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants (including New ParentCo or ResidualCo) and shall not be void or voidable by creditors of the Applicants, (ii) shall not constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal, provincial or territorial legislation, and (iii) shall not constitute nor be deemed to be oppressive or unfairly prejudicial conduct by the Applicants or the Released Parties pursuant to any applicable federal, provincial or territorial legislation.

THE MONITOR

[36] **PRAYS ACT** of the Monitor's Report.

[37] **DECLARES** that, subject to other orders of this Court made in these CCAA proceedings, nothing herein contained shall require the Monitor to occupy or to take control, or to otherwise manage all or any part of the assets of the Applicants. The Monitor shall not, as a result of this Order, be deemed to be in possession of any assets of the Applicants within the meaning of environmental legislation, the whole pursuant to the terms of the CCAA.

[38] **DECLARES** that the Monitor, its employees and representatives shall not be deemed directors of ResidualCo or New ParentCo, *de facto* or otherwise, and shall incur no liability as a result of acting in accordance with this Order, other than any liability arising out of or in connection with the gross negligence or wilful misconduct of the Monitor.

[39] **DECLARES** that no action lies against the Monitor by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Monitor or belonging to the same group as the Monitor shall benefit from the protection arising under the present paragraph.

GENERAL

[40] **ORDERS** that the Purchaser and any successor to the Applicants shall be authorized to take on behalf of the Applicants all steps as may be necessary to effect the discharge of the Encumbrances as provided for in paragraph [30] hereinabove.

[41] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.

[42] **DECLARES** that the Monitor shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and, without limitation to the foregoing, an order under Chapter 15 of the U.S. Bankruptcy Code, for which the Monitor shall be the foreign representative of the Applicants. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to Monitor as may be deemed necessary or appropriate for that purpose.

[43] **REQUESTS** the aid and recognition of any court or administrative body in any province or territory of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order.

[44] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever.

WITH COSTS.

_____

MARIE-ANNE PAQUETTE, J.S.C.

Hearing dates: May 30, 31, 2022

SCHEDULE A

PURCHASE AGREEMENT

See Attached.

SCHEDULE B

FORM OF CERTIFICATE OF MONITOR

CANADA
PROVINCE OF QUEBEC
Division DISTRICT OF MONTRÉAL

SUPERIOR COURT
Commercial

File No: 500-11-060598-212

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED:

BLACKROCK METALS INC.

-and-

BLACKROCK MINING INC.

-and-

BRM METALS GP INC.

-and-

BLACKROCK METALS LP

Applicants

-and-

DELOITTE RESTRUCTURING INC.

Monitor

CERTIFICATE OF THE MONITOR

RECITALS:

A. Pursuant to an Order of the Superior Court of Québec (Commercial Division) (the "**Court**") dated December 23, 2021, the Applicants commenced proceedings pursuant to the *Companies' Creditors Arrangement Act* (Canada) and Deloitte Restructuring Inc. was appointed as monitor of the Applicants (the "**Monitor**") in those proceedings.

B. Pursuant to an Order of the Court dated ●, the Court approved the share purchase agreement dated December 22, 2021 (the "**Purchase Agreement**") among (i) Investissement Québec ("**IQ**") and OMF Fund II H Ltd. ("**Orion**"), as purchasers (collectively, the "**Purchaser**"), and (ii) the Applicants, including the Reorganization described in the Steps Memorandum and further added
● ("**New ParentCo**") and ● ("**ResidualCo**") as Applicants in these proceedings.

C. Unless otherwise indicated herein, capitalized terms used herein have the meanings given in the Purchase Agreement.

THE MONITOR CERTIFIES the following:

1. The Parties to the Purchase Agreement have confirmed to the Monitor that the conditions to Closing set forth in the Purchase Agreement have been satisfied or waived by the Parties.

2. The Parties to the Reorganization have confirmed that the transactions described in the Steps Memorandum have been completed, satisfied or waived by the Parties.

3. The Parties to the Purchase and Sale Transactions have confirmed to the Monitor that the closing has occurred.

4. This Certificate was issued by the Monitor at_____ **[time]** on _____ **[date]**.

Deloitte Restructuring Inc., in its capacity as Monitor of the Applicants, and not in its personal capacity.

Name:

Title:

_____

_____

SCHEDULE C

SECURITY/ENCUMBRANCES TO BE DISCHARGED

At the Public Register of Real and Immovable Mining Rights (known as GESTIM Plus, a Mining Title Management System, the **Public Register**) and/or the Land Register for the Registration Division of Lac-Saint-Jean-Ouest (the **Land Register**):

The immovable and movable hypothecs created pursuant to:

1. A Deed of Movable and Immovable Hypothec by BlackRock Metals Inc. in favour of Prosperity Materials Macao Commercial Offshore Limited, executed before Mtre Sébastien Marcoux, Notary, on July 25, 2011 under number 136 of his minutes and registered in the Public Register on September 27, 2011 under number **54 181**;

2. A Deed of on the Universality of Movable and Immovable Property by BlackRock Metals Inc. in favour of BNY Trust Company of Canada, executed before Mtre Ismaël Bolly, Notary, on December 14, 2018 under number 2023 of his minutes and registered in the Public Register on July 5, 2019 under number **57 386** and in the Land Register on December 17, 2018, under number **24 331 264**;

3. A Deed of Hypothec on the Universality of Movable and Immovable Property by Minière BlackRock Inc./BlackRock Mining Inc. in favour of BNY Trust Company of Canada, executed before Mtre Ismaël Bolly, Notary, on February 13, 2020 under number 2041 of his minutes and registered in the Public Register on April 6, 2020, under number **57 612** and in the Land Register on February 14, 2020, under number **25 212 375**.

At the Register of Personal and Movable Real Rights (**RPMRR**):

The hypothecs and securities created pursuant to:

1. Conventional Hypothec without Delivery by BlackRock Metals Inc./ Métaux BlackRock Inc. in favour of BNY Trust Company of Canada, executed before Mtre Ismael Bolly, notary, on December 14, 2018 under number 2023 of his minutes, and registered in the RPMRR on December 17, 2018 under number **18-1382363-0001**;

2. Conventional Hypothec without Delivery by BlackRock Mining Inc./Minière BlackRock Inc. in favour of BNY Trust Company of Canada, executed before Mtre Ismaël Bolly, notary, on February 13, 2020 under number 2141 of his minutes, and registered in the RPMRR on February 13, 2020 under number **20-0149733-0001**;

3. Conventional Hypothec without Delivery by Commandité Métaux BRM Inc./BRM Metals GP Inc. in favour of BNY Trust Company of Canada, executed before Mtre Ismaël Bolly, notary, on February 13, 2020 under number 2143 of his minutes and registered in the RPMRR on February 13, 2020 under number **20-0149733-0002**;

4. Conventional Hypothec without Delivery by BlackRock Metals LP/ Métaux BlackRock, S.E.C. in favour of BNY Trust Company of Canada, executed before Mtre Ismaël Bolly, notary, on February 13, 2020 under number 2142 of his minutes and registered in the RPMRR on February 13, 2020 under number **20-0149733-0003**.

SCHEDULE C (CONT.)

SECURITY/ENCUMBRANCES TO BE DISCHARGED

Any other encumbrance of any kind or nature whatsoever that is not a Permitted Encumbrance expressly set out in Schedule “D” is to be stricken and cancelled from the Public Register, the Land Register and the RPMRR.

SCHEDULE D

PERMITTED ENCUMBRANCES

At the Public Register of Real and Immovable Mining Rights (known as GESTIM Plus, a Mining Title Management System, the **Public Register**) and/or the Land Register for the Registration Division of Lac-Saint-Jean-Ouest (the **Land Register**):

The immovable and movable hypothecs created pursuant to:

1. The *Articles of Amalgamation* dated April 14, 2011, registered in the Public Register on November 16, 2011 under number **54 277** with regard to the amalgamation of BlackRock Metals Inc. / Métaux BlackRock Inc. and Winner World Holdings Limited, against among others, the following mining properties: CDC 2233502 to CDC 2233510, BNE 33451 and BNE 33452;

2. A *Certificate of Amendment* dated March 26, 2015, registered in the Public Register on October 5, 2015 under number **56 014**, whereby Cogitore Resources Inc. changed its name to CR Capital Corp. The *Certificate of Amendment* is registered against among others, the following mining claims: CDC 2427900 to CDC 2427943;

3. A Transfer Form of Mining Rights dated August 31, 2015, registered in the Public Register on October 5, 2015 under number **56 015**, whereby CR Capital Corp. transferred to BlackRock Metals Inc., all of its interest in the following mining claims: CDC 2427900 to CDC 2427943;

4. A Transfer Form of Mining Rights dated February 20, 2020, registered in the Public Register on March 25, 2020 under number **57 596**, whereby Métaux BlackRock Inc. transferred to Minière BlackRock Inc., all of its interest in the following mining properties: CDC 2233502 to CDC 2233510, CDC 2427688 to CDC 2427689, CDC 2427900 to CDC 2427943, CDC 2430111 to CDC 2430262, CDC 2525657 to CDC 2525679, BNE 33451 and BNE 33452;

5. A Transfer Agreement dated September 30, 2019, registered in the Land Register on February 28, 2020 under number **25 240 090**, whereby BlackRock Metals Inc. transferred to BlackRock Mining Inc., all of its interest in the following mining properties: CDC 2233502 to CDC 2233510, CDC 2427688 to CDC 2427689, CDC 2427900 to CDC 2427943, CDC 2430111 to CDC 2430262, CDC 2525657 to CDC 2525679, BNE 33451 and BNE 33452 corresponding to the land files numbers 90-A-2805 to 90-A-3036. The mining rights which wholly correspond to the mining rights which the land files were opened in the Register of Real Rights of State Resources Development kept at the Land Register.

At the Register of Personal and Movable Real Rights (**RPMRR**):

The hypothecs and securities created pursuant to:

1. Conventional Hypothec without Delivery by Métaux BlackRock Inc. / BlackRock Metals in favour of Banque Royale du Canada, executed on December 20, 2016 and registered in the RPMRR on December 22, 2016 under number **16-1243940-0001,** as amended on December 27, 2016 under number **16-1250904-0001**;

2. A Conventional Hypothec without Delivery by BlackRock Metals Inc./Métaux BlackRock Inc. in favour of Banque Royale du Canada, executed on December 21, 2016 and registered in the RPMRR on December 22, 2016 under number **16-1243940-0002**;

3. Conventional Hypothec without Delivery by BlackRock Metals Inc./Métaux BlackRock Inc. in favour of Banque Royale du Canada, executed on December 8, 2017 and registered in the RPMRR on December 13, 2017 under number **17-1316135-0001**;

4. Conventional Hypothec without Delivery by BlackRock Metals Inc./Métaux BlackRock Inc. in favour of Banque Royale du Canada, executed on September 19, 2018 and registered in the RPMRR on September 20, 2018 under number **18-1041186-0002**;

5. Conventional Hypothec without Delivery by and BlackRock Metals Inc./Métaux BlackRock Inc. in favour of Banque Royale du Canada, executed on November 16, 2018 and registered in the RPMRR on November 19, 2018 under number **18-1277897-0001**;

6. Conventional Hypothec without Delivery by BlackRock Metals Inc./Métaux BlackRock Inc. in favour of Banque Royale du Canada, executed on November 16, 2018 and registered in the RPMRR on November 19, 2018 under number **18-1277897-0002**;

7. Conventional Hypothec without Delivery by BlackRock Metals Inc./Métaux BlackRock Inc. in favour of Royal Bank of Canada executed on February 4, 2019 and registered in the RPMRR on February 4, 2019 under number **19-0103446-0001**;

8. Conventional Hypothec without Delivery by BlackRock Metals Inc./Métaux BlackRock Inc. in favour of Royal Bank of Canada, executed on February 4, 2019 and registered in the RPMRR on February 4, 2019 under number **19-0103446-0002**;

9. Conventional Hypothec without Delivery by BlackRock Metals Inc./Métaux BlackRock Inc. in favour of Royal Bank of Canada, executed on March 19, 2019 and registered in the RPMRR on March 19, 2019 under number **19-0262992-0001**;

10. Conventional Hypothec without Delivery by BlackRock Metals Inc./Métaux BlackRock Inc. in favour of Royal Bank of Canada, executed on April 24, 2019 and registered in the RPMRR on April 25, 2019 under number **19-0419807-0001**;

11. Conventional Hypothec without Delivery by BlackRock Metals Inc./Métaux BlackRock Inc. in favour of Royal Bank of Canada, executed on January 28, 2020 and registered in the RPMRR on January 29, 2020 under number **20-0088285-0001**.

Schedule G
Initial Order