

C A N A D A
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

Nº: 500-11-063053-231

SUPERIOR COURT
(Commercial Division)

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

STORNOWAY DIAMONDS (CANADA) INC.

-and-

11272420 CANADA INC.

Debtors

-and-

DELOITTE RESTRUCTURING INC.

Monitor

APPLICATION FOR THE ISSUANCE OF
AN ORDER EXTENDING THE STAY OF PROCEEDINGS AND FOR THE ISSUANCE
OF AN APPROVAL ORDER

(Companies' Creditors Arrangement Act, R.S.C. (1985), ch. C-36, Sections 9, 10, 11,
11.02 and 11.03 (hereinafter the **CCAA**))

TO THE HONOURABLE KAREN M. ROGERS, J.S.C., OR ONE OF THE
HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE
COMMERCIAL DIVISION FOR THE DISTRICT OF MONTRÉAL, THE DEBTORS
RESPECTFULLY SUBMIT:

I. INTRODUCTION

1. On October 27, 2023, this Court granted Stornoway Diamonds (Canada) Inc.'s (**SDCI**) and 11272420 Canada Inc.'s (**1127**, collectively with SDCI the **Debtors**) *Application for the Issuance of an Initial Order, an Amended Restated Initial Order and Ancillary Relief*, and notably issued an Initial Order under the CCAA, valid until November 3, 2023 (the **Initial Order** and the **Stay Period**).
2. Pursuant to the Initial Order, Deloitte Restructuring Inc. (the **Monitor**) was appointed as Monitor to the Debtors.
3. On November 3, 2023, the Court issued a Restated Initial Order, thereby extending the Stay Period until November 13, 2023.

4. On November 13, 2023, the Court issued an Amended and Restated Initial Order, notably extending the Stay Period until January 25, 2024.
5. On January 24, 2024, the Court issued a Second Amended and Restated Initial Order, notably extending the Stay Period until March 31, 2024.
6. On April 4, 2024, the Court issued a Third Amended and Restated Initial Order, notably extending the Stay Period until October 10, 2024, and also issued an Approval Order approving a Call Option Agreement entered into between Winsome Resources Ltd. (**Winsome**) and the Debtors (the **Call Option Agreement**).
7. On October 4, 2024, the Court issued a Fourth Amended and Restated Initial Order, notably extending the Stay Period until January 24, 2025.
8. On January 17, 2025, the Court issued an Order extending the Stay Period until February 28, 2025.

II. ORDERS SOUGHT BY THE DEBTORS

9. For the reasons set out below, the Debtors hereby seek the issuance of an order extending the stay of proceedings substantially in the form of the draft order communicated herewith as **Exhibit R-1** providing for an extension of the stay period until **September 30, 2025** (the **Extended Stay Period**).
10. In addition to the aforementioned order, the Debtors also seek the issuance of an order approving the Second Amended and Restated Call Option Agreement entered into between Winsome and the Debtors on February 12, 2025 (the **Second Amended and Restated Call Option Agreement**), substantially in the form of the draft order communicated herewith as **Exhibit R-2** (the **Approval Order**), for the reasons set out below.
11. In support of this Application and the relief sought herein, the Monitor will file a report entitled *Eighth Report to the Court submitted by Deloitte Restructuring Inc.* (the **Eighth Report**), a copy of which will be communicated as **Exhibit R-3**.
12. It is respectfully submitted that issuing the sought orders is necessary and appropriate in the circumstances of this case and is in the best interest of the Debtors and all their stakeholders.

III. THE CCAA PROCEEDINGS

13. Since the issuance of the Fourth Amended and Restated Initial Order, the Debtors have notably implemented the following actions and measures in collaboration with the Monitor:
- a) the Debtors have concluded their diamond extraction and milling campaigns on January 28, 2025. Since then, the Renard Mine has been placed into cold care and maintenance mode to reduce costs associated with its ongoing operations. Care and maintenance of the Renard Mine has since been provided by the Debtors' key employees;
 - b) on January 29, 2025, the Debtors have initiated storage work on the diamond processing plant, as well as the dismantling of underground infrastructure;
 - c) the Debtors have initiated discussions with third parties to obtain service offerings for the phase 2 environmental site assessments, as well as the drafting of the final restoration plan of the Renard Mine;
 - d) the Debtors have either fully or partially settled litigations with the construction lienholders;
 - e) the Debtors, in consultation with the Monitor, have solicited offers regarding certain non-core assets, and are currently negotiating and drafting the documentation in order to submit purchase and sale transactions to the Court for approval at a later date;
 - f) the Debtors, in consultation with the Monitor and with the approval of the of the Streamers and Diaquem Inc. (the **Secured Creditors**), entered into an Amended and Restated Call Option Agreement with Winsome on December 3, 2024 (the **First Amended and Restated Call Option Agreement**), pursuant to which, among other things, the parties agreed to extend the Call Option Period, as defined in the Call Option Agreement, to February 1st, 2025 and to restructure the Transaction Consideration, as defined in the First Amended and Restated Call Option Agreement. The Debtors were authorized to make such non-material modifications to the Call Option Agreement, as per paragraph 14 of the Approval Order dated April 4, 2024.
 - g) since on or about December 20, 2024, the Debtors, in consultation with the Monitor, have held negotiations with Winsome regarding, notably, the

conclusion of the Second Amended and Restated Call Option Agreement, and the extension of the Call Option Period provided thereunder. The Debtors' request for the issuance of an Approval Order substantially in the form of Exhibit R-2 is discussed further in Section IV, below.

IV. **SECOND AMENDED AND RESTATED CALL OPTION AGREEMENT**¹

14. On January 30, 2025, the Debtors and Winsome entered into an agreement pursuant to which the parties agreed to further extend the Call Option Period to February 28, 2025, in order to provide the parties with the necessary time to negotiate the terms of the Second Amended and Restated Call Option Agreement. A copy of the January 30, 2025 Agreement is communicated herewith under seal as **Exhibit R-4**.
15. The Second Amended and Restated Call Option Agreement, communicated herewith under seal as **Exhibit R-5**, contains notably the following changes, as highlighted by the comparative document showcasing the changes between the Call Option Agreement and the Second Amended and Restated Call Option Agreement, communicated herewith under seal as **Exhibit R-6**:
 - a) it provides for the right for Winsome to extend the Call Option Period until August 31, 2025, in consideration for an additional payment by Winsome of \$8,500,000 no later than February 21, 2025 (the **Extension Consideration**);
 - b) should Winsome exercise its right to extend the Call Option Period as provided above but fail to issue the Call Notice on or before July 31, 2025, it provides for an additional consideration payable by Winsome to the Debtors, in the form of the issuance of Consideration Shares;
 - c) subject to Winsome having extended the Call Option Period until August 31, 2025, it provides a break fee should Winsome elect to terminate the Second Amended and Restated Call Option Agreement;
 - d) it modifies the terms surrounding the exclusivity granted to Winsome by the Debtors; and

¹ All the terms used in this section and not otherwise defined in this Application shall have the meaning ascribed to them in the Second Amended and Restated Call Option Agreement.

- e) it provides for the compulsory exercise by Winsome of its Call Option should it meet its Funding Threshold.
- 16. On February 17, 2025, Winsome issued the extension notice to extend the Call Option Period until August 31, 2025.
- 17. The Debtors remain of the view that the Second Amended and Restated Call Option Agreement is the best available alternative for the potential monetization of the Debtors' assets. Given that the parties have agreed to numerous changes to the Call Option Agreement as approved by the Court, the Debtors are now seeking the Court's approval of said modifications, so as to provide certainty to the parties during the extended Call Option Period.
- 18. The Debtors submit that it is appropriate and reasonable for this Court to approve the Second Amended and Restated Call Option Agreement and to issue the proposed Approval Order (Exhibit R-2).

V. OTHER RELIEF SOUGHT

A. The Requested Extension of the Stay Period

- 19. The Debtors request an extension of the Stay Period until September 30, 2025.
- 20. It is respectfully submitted that the requested extension of the Stay Period is required to provide sufficient time to, *inter alia*:
 - a) allow Winsome and the Debtors to commence good faith negotiations with a view to complete the necessary documentation to complete the contemplated Transaction by no later than July 31, 2025 (the **Negotiation Period**), which Negotiation Period may be extended, subject to the consent of Winsome, the Debtors, the Monitor, and the Secured Creditors to such extension;
 - b) allow Winsome to exercise its Call Option or otherwise to allow for the implementation of an orderly liquidation and wind-down of the assets and operations of the Debtors;
 - c) initiate or continue discussions with stakeholders of the Debtors, namely with respect to SDCI's environmental obligations and related implications;
 - d) implement cold care and maintenance measures in the context of the contemplated Transaction;

- e) allow for the continuation of the monitoring and sale of diamonds from the now concluded milling campaigns.
 - f) finalize the negotiation and drafting of the transactions regarding the sale of certain non-core assets to be submitted to the Court for approval at a later date, and further monetize the remaining Non-Core Assets during the Call Option Period.
- 21. The Debtors will report to the Court prior to the expiry of the contemplated Stay Period on September 30, 2025, as to the status of the Second Amended and Restated Call Option Agreement, and any developments which might have occurred thereunder.
 - 22. Based on the projections, as set out in Appendix D to the Monitor's Eight Report (Exhibit R-3, under seal), and considering the current liquidities resulting from the recent diamond sales and the payment by Winsome of the Extension Consideration, the Debtors expect to have sufficient funding and liquidity to cover anticipated restructuring costs and expenses during the extended Stay Period.
 - 23. As such, the Monitor is of the view that the requested extension of the Stay Period is necessary and reasonable in the circumstances.
 - 24. The Secured Creditors, being the main secured creditors of the Debtors and unaffected creditors in the CCAA proceedings, support the requested extension.
 - 25. The Debtors have acted and continue to act in good faith and with due diligence, and it is respectfully submitted that issuing the sought order is necessary and appropriate in the circumstances of this case and is in the best interest of the Debtors and all their stakeholders.

B. Sealing of Confidential Documents

- 26. Certain exhibits filed in support of this Application contain commercially sensitive information related to the affairs of the Debtors.
- 27. It is respectfully submitted that the confidentiality of such information should be preserved and that it should be ordered that Exhibits R-4, R-5 and R-6 to the Application and Appendices A, B, C and D to the Monitor's Eight Report (Exhibit R-3) be kept confidential and filed under seal until further order of this Court.

VI. CONCLUSION

28. For the reasons set forth above, the Debtors believe it is both appropriate and necessary that the relief sought herein be granted.
29. The Debtors request that the proposed orders be rendered executory notwithstanding appeal, notably given (i) the delay for closing and (ii) and the benefits of allowing Winsome to pursue its due diligence and its financing efforts so as to maximize the opportunity for Winsome to exercise its Call Option as soon as possible.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present *Application for the Issuance of an Order Extending the Stay of Proceedings and Application for the Issuance of an Approval Order*;

ISSUE an Order Extending the Stay of Proceedings substantially in the form of the draft order communicated herewith as Exhibit R-1;

ISSUE an Approval Order for the Second Amended and Restated Call Option Agreement substantially in the form of the draft order communicated herewith as Exhibit R-2;

THE WHOLE without costs, save and except in case of contestation.

Montréal, February 20, 2025

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AFFIDAVIT

I, the undersigned, Patrick Sévigny, President and Chief Executive Officer, duly authorized director of the Debtors, having my professional domicile at 1 Place Ville Marie, bureau 2500, Montréal, province de Québec, H3B 1R1, solemnly declare that all the facts alleged in the present *Application for the Issuance of an Order Extending the Stay of Proceedings and Application for the Issuance of an Approval Order* are true.

AND I HAVE SIGNED



Patrick Sévigny

SOLEMNLY DECLARED before me by technological means, this February 20, 2025. The Affiant is in the city of Candiac and the Commissioner of Oaths is in the city of Montréal.



Commissioner of Oaths for the Province of Québec

NOTICE OF PRESENTATION

TO: The Service List

TAKE NOTICE that the present *Application for the Issuance of an Order Extending the Stay of Proceedings and Application for the Issuance of an Approval Order* will be presented for adjudication before the Honourable Justice Karen M. Rogers of the Superior Court of Québec in the Montréal Courthouse located at 1, Notre-Dame Street East, Montréal, Québec, on **February 24, 2025, at 9:30 a.m. in room 15.11.**

To join the hearing virtually, use the following link:

Rejoindre la réunion Microsoft Teams

[+1 581-319-2194](tel:+15813192194) Canada, Québec (Numéro payant)

[\(833\) 450-1741](tel:+18334501741) Canada (Numéro gratuit)

ID de conférence : 508 117 984#

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teams@teams.justice.gouv.qc.ca ID de la conférence VTC : 1115629941

[Autres instructions relatives à la numérotation VTC](#)

DO GOVERN YOURSELF ACCORDINGLY.

Montréal, February 20, 2025



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SUPERIOR COURT

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Commercial Division
(Sitting as a court designated pursuant to the
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**IN THE MATTER OF THE COMPANIES'
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-and-

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Debtors

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**LIST OF EXHIBITS IN SUPPORT OF THE APPLICATION FOR THE ISSUANCE OF
AN ORDER EXTENDING THE STAY OF PROCEEDINGS AND FOR THE ISSUANCE
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Exhibit R-1: Draft Order Extending the Stay of Proceedings;

Exhibit R-2: Draft Approval Order;

Exhibit R-3: Eighth Report to the Court submitted by Deloitte Restructuring Inc.;

Exhibit R-4: Under seal, agreement pursuant to which the parties agreed to further extend the Call Option Period to February 28, 2025;

Exhibit R-5: Under seal, Second Amended and Restated Call Option Agreement;

Exhibit R-6: Under seal, comparative document showcasing the changes between the Call Option Agreement and the Second Amended and Restated Call Option Agreement.

Montréal, February 20, 2025

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Creditors Arrangement Act, R.S.C., c. C-36, as amended)
DISTRICT OF MONTREAL

**IN THE MATTER OF THE COMPANIES'
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Debtors / Applicants

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ORIGINAL

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