

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

SUPERIOR COURT

Nº: 500-11-063053-231

Commercial Division
(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act,
R.S.C., c. C-36, as amended)

**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
A FOURTH AMENDED AND RESTATED INITIAL ORDER AND A CASE
MANAGEMENT ORDER**

*(Companies' Creditors Arrangement Act, R.S.C. (1985), ch. C-36, Sections 9, 10, 11,
11.02, 11.03, 11.51 and 11.52 (hereinafter the **CCAA**), as well as the Code of civil
procedure, CQLR c C-25.01, Article 158)*

**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* (the **Initial Application**), and issued an Initial Order under the CCAA, valid until November 3, 2023 (the **Initial Order** and the **Stay Period**), as

well as a Sale and Investment Solicitation Process Approval Order (the **SISP Order**) with respect to the implementation of a solicitation process (the **SISP**).

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 24, 2025.
5. On January 24, 2024, the Court issued an Second Amended and Restated Initial Order, notably extending the Stay Period until March 31, 2024.
6. The same day, the Court issued an order confirming the approval of certain payments owed and payable to unaffected creditors since December 2023.
7. On March 22, 2024, the Court issued an order extending the Stay Period until April 5, 2024, for the purposes of allowing the presentation of an upcoming application by the Debtors with respect to a further extension of the Stay Period and the approval of a transaction resulting from the SISP (as this term is defined below).
8. On April 4, 2024, the Court issued a Third Amended and Restated Initial Order (the **Third ARIO**), notably extending the Stay Period until October 10, 2024.
9. For the reasons set out below, the Debtors hereby seek the issuance of a Fourth Amended and Restated Initial Order substantially in the form of the draft order communicated herewith as **Exhibit R-1** (the **Draft Fourth ARIO**) providing for, *inter alia*,
 - a) Stay Extension: an extension of the Stay Period until **January 24, 2025** (the **Extended Stay Period**), namely to allow for the completion of various steps under the Call Option Agreement (as defined hereunder) for which approval is sought herein; and
 - b) Sealing Order: a sealing order with regards to certain exhibits filed in support of this Application.

A copy of the redline documents comparing the Draft Fourth ARIO to the model CCAA Initial Order and to the Third ARIO are respectively communicated herewith as **Exhibits R-2** and **R-3**.

10. Moreover, the Debtors hereby seek the issuance of a separate case management order (the **Draft Case Management Order**), substantially in the form of the draft order communicated herewith as **Exhibit R-4**, which sets out the specific procedural framework to govern the contestation by the Debtors' of various claims that are the subject of legal construction hypothecs, so that they can be dealt with in a timely and efficient manner.
11. In support of this Application and the relief sought herein, the Monitor has prepared a report entitled *Sixth Report to the Court submitted by Deloitte Restructuring inc.* (the **Sixth Report**), a copy of which will be communicated as **Exhibit R-5**.
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.

II. THE CCAA PROCEEDINGS

A. The Call Option Agreement

13. On April 4, 2024, the Court issued an Approval Order approving a Call Option Agreement entered into between Winsome Resources Ltd. (**Winsome**) and the Debtors (the **Call Option Agreement**).
14. On August 1, 2024, Winsome exercised its right to extend the call option period to December 31, 2024, and, accordingly, paid an amount of \$2,000,000 to exercise such right.
15. In accordance with the terms of the Call Option Agreement, Winsome may, by written notice to the Debtors sent no later than December 15, 2024, elect to further extend the call option period to February 28, 2025, subject to an additional cash payment of \$2,000,000.

B. KERP Trust

16. On May 28, 2024, the Court rendered the Wager Earner Protection Program and Key Employee Retention Plan Trust Order (the **WEPP and KERP Trust Order**). By way of this order, the Court notably ordered that an amount equal to the aggregate of (i) the value of the outstanding obligations owing under the KERP Agreements and (ii) the value of the Debtors' key officers' retention bonuses (collectively, the **KERP Amount**) be placed in trust with the Monitor or a third-party trust agent (the **KERP Trust**).

17. Following the issuance of the WEPP and KERP Trust Order, the Debtors, with the assistance of the Monitor, took the necessary steps to set up the KERP Trust with a third-party agent.
18. On June 19, 2024, the KERP Amount was deposited in trust with a third-party agent, and the Monitor issued its certificate. Consequently, as per paragraph 37.1 of the Third ARIQ (as amended by the WEPP and KERP Trust Order), the KERP Charge was terminated and replaced with the KERP Trust.
19. The amounts deposited in the KERP Trust will be released by the third-party agent, in accordance with the terms of the KERP Agreements and retention letters, as applicable.
20. The Draft Fourth ARIQ reflects the creation of the KERP Trust, and the termination of the KERP Charge.

III. THE CASE MANAGEMENT ORDER SOUGHT

A. The Debtors' Applications to Cancel Legal Hypothecs

21. On October 4, 2024, the Debtors served on Gestion Houde Inc. (**Gestion Houde**) an *Application to Cancel a Legal Hypothec from the Land Registry and Public Register of Real and Immovable Mining Rights* (an **Application to Cancel a Legal Hypothec**).
22. The same day, the Debtors also served on Swallow-Fournier Inc. (**Swallow-Fournier**), 9466-0339 Québec Inc. (**SCC Modulaire**), 9039-4081 Québec Inc. (**Services SC**), and Meglab Électronique Inc. (**Meglab** and, together with Gestion Houde, Swallow-Fournier, SCC Modulaire and Services SC the **Construction Claimants**) Applications to Cancel a Legal Hypothec.
23. In view of the anticipated filing of an application for the approval of a transaction, the Debtors consider it appropriate to request that the Court issue certain orders regarding the management of the Debtors' Applications to Cancel Legal Hypothec and the procedural milestones to be met in order to ensure the most efficient management of such applications and their contestation by the Construction Claimants, as the case may be.
24. Pursuant to the Draft Case Management Order:
 - a) Construction Claimants who wish to object to the relief sought by the Debtors' by way of an *Application to Cancel a Legal Hypothec* shall have

until 5:00 p.m. Montréal Time on October 29, 2024, to file an objection (the **Objection Deadline**).

- b) The Debtors in turn shall have until 5:00 p.m. Montréal Time on November 12, 2024, to serve a reply to the contestation(s) filed by the Construction Claimants.
 - c) The Debtors and each Construction Claimant (the **Parties**), in their respective matters, shall file a joint statement including a chronology of the facts admitted, the common issues in dispute, a detailed summary of the main facts in dispute, as well as the list of admissions or proposals for admissions, by no later than 4:30 p.m. Montréal Time on November 29, 2024.
 - d) The Parties, in their respective matters, shall file a request for setting down for trial and judgment by way of a joint declaration by no later than 4:30 p.m. Montréal Time on November 29, 2024.
25. Moreover, unless otherwise authorized by the Court, a Construction Claimant who does not file a Contestation by the Objection Deadline shall be forever barred from contesting the Debtors' Application to Cancel a Legal Hypothec against it.
26. It is respectfully submitted that the Case Management Order sought is fair and reasonable and that its approval is appropriate in the circumstances to allow the Debtors to resolve disputes concerning the validity of the Construction Claimants' legal hypothecs, prior to the conclusion of the potential transaction with Winsome.

IV. OTHER RELIEF SOUGHT

A. The Requested Stay of Proceedings

27. The Debtors request an extension of the Stay Period until January 24, 2025.
28. 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 and complete the Transaction documentation negotiation period to conduct good faith negotiations of the relevant Transaction agreement (the **Negotiation Period**);
 - b) allow Winsome to exercise its call option or to exercise its right to extend the call option period, or otherwise to allow for the implementation of an

orderly liquidation and wind-down of the assets and operations of the Debtors;

- c) allow the adjudication of the Applications to Cancel a Legal Hypothec;
 - d) allow the Debtors to maintain ongoing diamond mining campaigns until the surface diamonds have been completely exploited, for the benefit of the Debtors' stakeholders, it being understood that, should Winsome elect not to exercise its call option, an orderly liquidation of the assets and wind-down operations of the Debtors will ensue.
 - e) monetize the Non-Core Assets during the call option period, as further detailed in the Monitor's Sixth Report (Exhibit R-5).
29. The Debtors will report to the Court prior to the expiry of the contemplated Stay Period on January 24, 2025, as to the status of the Call Option Agreement, and any developments which might have occurred thereunder.
30. Based on the projections, as set out in Appendix B to the Monitor's Sixth Report (Exhibit R-5, under seal), and considering the current liquidities resulting from the diamond sales, the Debtors expect to have sufficient funding and liquidity to cover anticipated restructuring costs and expenses during the contemplated Stay Period.
31. As such, the Monitor is of the view that the requested extension of the Stay Period is necessary and reasonable in the circumstances.
32. The Streamers and Diaquem, being the main secured creditors of the Debtors and unaffected creditors in the CCAA proceedings, support the requested extension.
33. The Debtors have acted and continue to act in good faith and with due diligence, and the extension sought is appropriate under the present circumstances.

B. Sealing of Confidential Documents

34. Certain exhibits filed in support of this Application contain commercially sensitive information related to the affairs of the Debtors.
35. It is respectfully submitted that the confidentiality of such information should be preserved and that it should be ordered that **Appendices A and B** to the Monitor's Sixth Report (**Exhibit R-5**) be kept confidential and filed under seal until further order of this Court.

V. CONCLUSION

36. For the reasons set forth above, the Debtors believe it is both appropriate and necessary that the reliefs sought herein be granted.
37. Given the need to advance the restructuring process as expeditiously as possible, the Debtors respectfully submit that the Draft Fourth ARIO and Case Management Order be rendered executory notwithstanding appeal.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Application for a the Issuance of a Fourth Amended and Restated Initial Order and Case Management Order;

ISSUE a Fourth Amended and Restated Initial Order substantially in the form of the draft order communicated herewith as Exhibit R-1;

ISSUE a Case Management Order substantially in the form of the draft order communicated herewith as Exhibit R-4;

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

Montréal, October 4, 2024

Norton Rose Fulbright Canada LLP

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AFFIDAVIT

I, the undersigned, Teddy Kamani, Chief Financial Officer, duly authorized director of the Debtors, having my professional domicile at 1111 Blvd. Saint-Charles W., Suite 400, Longueuil, province of Québec, J4K 5G4, solemnly declare that all the facts alleged in the present *Application for the Issuance of a Fourth Amended and Restated Initial Order and Case Management Order* are true.

AND I HAVE SIGNED



Teddy Kamani

SOLEMNLY DECLARED before me by technological means, this October 4, 2024. The Affiant is in the city of Longueuil and the Commissioner of Oaths is in the city of Varennes.



Commissioner of Oaths for the Province of Québec



NOTICE OF PRESENTATION

TO: The Service List

TAKE NOTICE that the present *Application for a the Issuance of a Fourth Amended and Restated Initial Order and a Case Management 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 **October 8, 2024, at 9h00 a.m., in a room to be determined and communicated to the Service List thereafter.**

DO GOVERN YOURSELF ACCORDINGLY.

Montréal, October 4, 2024

Norton Rose Fulbright Canada LLP

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-and-

11272420 CANADA INC.

Debtors

-and-

DELOITTE RESTRUCTURING INC.

Monitor

LIST OF EXHIBITS

**In support of the Application for the Issuance of a Fourth Amended and Restated
Initial Order and Case Management Order**

- Exhibit R-1:** Draft Fourth Amended and Restated Initial Order;
- Exhibit R-2:** Redline document comparing the Draft Fourth Amended and Restated Initial Order to the model CCAA initial order;
- Exhibit R-3:** Redline document comparing the Draft Fourth Amended and Restated Initial Order to the Third Amended and Restated Initial Order;
- Exhibit R-4:** Draft Case Management Order;
- Exhibit R-5:** Sixth Report to the Court submitted by Deloitte Restructuring inc. (Appendices A and B **UNDER SEAL**);

Montréal, October 4, 2024

Norton Rose Fulbright Canada LLP

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DISTRICT OF MONTREAL**

**IN THE MATTER OF THE COMPANIES'
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STORNOWAY DIAMONDS (CANADA) INC.

11272420 CANADA INC.

Debtors / Applicants

-&-

9039-4081 QUEBEC INC.

Respondent

-&-

DELOITTE RESTRUCTURING INC.

Monitor

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ORIGINAL

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