

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
AN APPROVAL AND VESTING ORDER**

(*Companies' Creditors Arrangement Act*, R.S.C. (1985), ch. C-36, Sections 9, 10, 11
and 36 (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 this Application, Stornoway Diamonds (Canada) Inc. (**SDCI**) and 11272420 Canada Inc. (**1127**, collectively with SDCI the **Debtors**) hereby seek the issuance of an order approving the sale of certain of the Purchased Assets (as defined below) to Accès Industriel Minier Inc. (**Accès Industriel**), the whole substantially in the form of the draft order communicated herewith as **Exhibit R-1**.
2. In support of this Application and the relief sought herein, Deloitte Restructuring Inc. (the **Monitor**) will file a report entitled *Fifth Report to the Court*

*submitted by Deloitte Restructuring inc. (the **Fifth Report**)*, a copy of which is communicated herewith as **Exhibit R-2**.

3. 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.

II. **BACKGROUND**

A. Non-Core Assets

4. On April 4, 2024, this Court issued an Approval Order approving a Call Option Agreement entered into between Winsome Resources Ltd. (**Winsome**) and the Debtors (the **Call Option Agreement**).
5. The Call Option Agreement, as approved by the Court, provides for the Debtors' right to sell, transfer or otherwise dispose of certain equipment (the **Non-Core Assets**), namely to allow the Debtors to monetize such assets.
6. The Debtors, in consultation with the Monitor, identified a list of Non-Core Assets which could immediately be monetized (the **Assets**), given that certain other Non-Core Assets are currently being utilized by the Debtors for the extraction and treatment of diamonds.

B. The Call for Tenders

7. On May 29, 2024, with the approval of the Streamers and Diaquem Inc. (the **Secured Creditors**), Stornoway distributed to potentially interested parties call for tender documentation, which included, *inter alia*, the terms and conditions of the call for tenders, as well as the complete list of the Assets (the **Call for Tenders**). A total of 60 potentially interested parties were solicited.
8. The deadline for submitting binding offers was set for June 28, 2024.
9. On June 28, 2024, the Monitor received seven binding bids. A summary of the bids received is filed as a confidential schedule to the Fifth Report.
10. On July 10, 2024, Stornoway, with the approval of the Monitor and the Secured Creditors, notified Accès Industriel that its bid had been selected as the successful bid (the **Successful Bid**). A copy of the Successful Bid is communicated herewith as **Exhibit R-3**.
11. Stornoway and Accès Industriel then proceeded to negotiate a purchase agreement (the **Purchase Agreement**) for which they are now seeking Court

approval, the whole as further described in Section III below. A copy of the Purchase Agreement for which approval is sought is communicated herewith as **Exhibit R-4**.

C. Settlement Agreement with Caterpillar Financial Services Limited

12. Certain of the Assets that were included in the Call for Tenders form part of the assets that are the subject of a Master Lease Agreement (the **CAT Assets**) entered into between Caterpillar Financial Services Limited (**CAT Financial**) and SDCI on July 25, 2014, as amended and restated from time to time (the **Master Lease**).
13. CAT Financial notably holds a first-ranking hypothec on the CAT Assets, which are also subject to leases.
14. On July 2, 2024, CAT Financial and SDCI, with the Secured Creditors' consent, entered into a settlement agreement (the **Settlement Agreement**) with respect to the sale of the CAT Assets and the distribution of the resulting sale proceeds on the terms set out therein. A copy of the Settlement Agreement is communicated herewith as **Exhibit R-5**.
15. In summary, the Settlement Agreement provides that any Sale Proceeds (as defined in the Settlement Agreement) shall be disbursed as follows:
 - a) Firstly, the aggregate sum of \$1,000,000 USD shall be paid to CAT Financial; and
 - b) Secondly, any Sale Proceeds realized in excess of the sum of \$1,000,000 USD shall be allocated as follows:
 - i) 55% of the remaining Sales Proceeds shall be payable to CAT Financial; and
 - ii) 45% of the remaining Sales Proceeds shall be payable to the Debtors.
16. In view of the foregoing, CAT Financial has been informed of, and agrees to, the sale of the CAT Assets.
17. Accordingly, the Debtors understand that CAT Financial supports the present Application.

III. **APPROVAL OF THE PROPOSED TRANSACTION**

18. The Debtors are seeking the approval of the transaction contemplated in the Purchase Agreement (the **Proposed Transaction**).
19. Pursuant to the Proposed Transaction:
 - a) The Debtors will sell to Accès Industriel the Purchased Assets (as defined in the Purchase Agreement) on an “as is where is” basis and free and clear of any encumbrances;
 - b) the Purchased Assets consist of 29 out of the 41 Assets marketed as part of the Call for Tenders; and
 - c) the purchase price payable for the Purchased Assets is \$2,400,000 and is payable in cash at closing.
20. The Proposed Transaction is not subject to any financing conditions but is conditional on the approval of the Court and the issuance of an order substantially in the form of the proposed Approval and Vesting Order (Exhibit R-1).

D. Grounds for Approval of the Proposed Transaction

21. The Purchase Agreement should be approved by the Court, namely for the following reasons:
 - a) The Call for Tenders was conducted by Stornoway, in consultation with the Monitor and the Secured Creditors, in accordance with the terms and conditions of the Call for Tenders, as further described in Exhibit R-2;
 - b) The market has been thoroughly canvassed through a fulsome, fair and transparent process, and the transaction provided for in the Proposed Transaction represents the best transaction and outcome resulting from the Call for Tenders, for the benefit of the stakeholders of the Debtors as a whole;
 - c) The Proposed Transaction complies with the terms of the Call for Tenders;
 - d) The Secured Creditors and CAT have been consulted and support the Proposed Transaction;
 - e) The Monitor is of the opinion that the disposition contemplated under the Proposed Transaction would be more beneficial to the Debtors’ creditors than a disposition of the Purchased Assets under a bankruptcy.

22. Considering the foregoing, the Monitor supports the relief sought herein by the Debtors.
23. Therefore, the Debtors submit that it is appropriate and reasonable for this Court to approve the Proposed Transaction and to issue the proposed Approval and Vesting Order (Exhibit R-1).

IV. **CONCLUSION**

24. For the reasons set forth above, the Debtors believe it is both appropriate and necessary that the relief sought herein be granted.
25. Given the delays for closing, and the benefits of completing the sale of the Purchased Assets as soon as possible, the Debtors request that the proposed Approval and Vesting Order (Exhibit R-1) be rendered executory notwithstanding appeal.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present *Application for the Issuance of an Approval and Vesting Order*;

ISSUE an Approval and Vesting Order substantially in the form of the draft order communicated herewith as Exhibit R-1;

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

Montréal, August 12, 2024

Norton Rose Fulbright Canada LLP

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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 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 an Approval and Vesting Order* are true.

AND I HAVE SIGNED



Patrick Sévigny

SOLEMNLY DECLARED before me by technological means, this August 12, 2024. The Affiant is in the city of Saint-Barbe and the Commissioner of Oaths is in the city of Saint-Hubert.



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 Approval and Vesting 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 **August 16, 2024, at 9:00 a.m. in room 16.04.**

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 : 516 211 860#

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Rejoindre à l'aide d'un dispositif de vidéoconférence

teams@teams.justice.gouv.qc.ca ID de la conférence VTC : 1149478699

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

DO GOVERN YOURSELF ACCORDINGLY.

Montréal, August 12, 2024



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Monitor

**LIST OF EXHIBITS IN SUPPORT OF THE APPLICATION FOR THE ISSUANCE OF
AN APPROVAL AND VESTING ORDER**

- Exhibit R-1:** Draft Approval and Vesting Order;
- Exhibit R-2:** Fifth Report to the Court submitted by Deloitte Restructuring Inc.;
- Exhibit R-3:** Copy of the Successful Bid;
- Exhibit R-4:** Copy of the draft Purchase Agreement;
- Exhibit R-5:** Copy of the Settlement Agreement between Caterpillar Financial Services Limited and Stornoway Diamonds (Canada) Inc.

Montréal, August 12, 2024

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NO.: 500-11-063053-231

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DISTRICT OF MONTREAL**

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APPROVAL AND VESTING ORDER
(Companies' Creditors Arrangement Act, R.S.C.
(1985), ch. C-36, Sections 9, 10, 11, 11.02, 11.03,
11.51, 11.52 and 36)**

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