

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 APPROVAL AND VESTING ORDER, A
LIQUIDATION ORDER AND ANCILLARY RELIEF**

*(Companies' Creditors Arrangement Act, R.S.C. (1985), c. C-36, Sections 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**, and collectively with SDCI, the **Debtors**) seek the issuance of the following orders:
 - a) an order approving the sale of certain Non-Core Assets (as defined below) to New Gold Inc. (**New Gold**), which Non-Core Assets are complementary to and part of the Non-Core Equipment (as defined below), substantially in the form of the draft *Ordonnance d'approbation et de dévolution* (the **AVO**) communicated herewith as **Exhibit R-1**;
 - b) an order approving the pursuit of the liquidation of the Debtors' remaining Non-Core Assets (the **Liquidation**) pursuant to a commission agreement

entered into between SDCI and TCL Asset Group Inc. (**TCL** and the **Commission Agreement**), substantially in the form of the draft order communicated herewith as **Exhibit R-2** (the **Liquidation Order**); and

- c) an order substantially in the form of the draft order communicated herewith as **Exhibit R-3** (the **KERP Trust Order**) providing for an authorization to increase the maximum amount currently held in trust in lieu of the KERP Charge previously granted by this Court (the **KERP Trust**) to an amount equal to the aggregate of (i) the value of the outstanding obligations owing under the KERP Agreement, as amended (the **KERP Amount**), plus (ii) an amount equal to the aggregate amount of retention bonuses payable by the Debtors to certain key officers of the Debtors, as amended (the **Retention Amount**), as described in the retention letters (the **Retention Letters**). A copy of the KERP Agreement and the Retention Letters are communicated herewith under seal, *en liasse*, as **Exhibit R-4**.
2. In support of the present application and the relief sought herein, the Monitor will file a report entitled *Tenth Report to the Court submitted by Deloitte Restructuring Inc.* (the **Monitor's Tenth Report**), a copy of which will be communicated as **Exhibit R-5**.
3. It is respectfully submitted that issuing the orders sought is necessary and appropriate in the circumstances and in the best interest of the Debtors and all stakeholders involved.

II. THE SALE OF NON-CORE ASSETS TO NEW GOLD INC.

A. Non-Core Assets

4. The call option agreement entered into between Winsome Resources Ltd. (**Winsome**) and the Debtors (as amended and restated, the **Call Option Agreement**) provides for the Debtors' right to sell, transfer or otherwise dispose of certain assets and equipment (the **Non-Core Assets**), and ultimately monetize same.
5. As such, the Debtors, in consultation with the Monitor, identified a list of Non-Core Assets which could be monetized as part of the Liquidation.
6. In the first phase of the Liquidation, the Debtors sold certain Non-Core Assets to Accès Industriel Minier Inc., as approved by this Court on August 16, 2024.
7. In the second phase of the Liquidation, the Debtors, in consultation with the Monitor, and with the *Streamers* and Diaquem Inc. (the **Secured Creditors**), sold

certain mobile camps (the **Non-Core Mobile Camps**) and certain equipment (the **Non-Core Equipment**), as part of the Non-Core Assets, to New Gold, as approved by this Court on April 17, 2025.

8. On April 9, 2025, New Gold submitted an offer for the acquisition of additional Non-Core Assets with the Monitor, consisting of parts complementary to and part of the Non-Core Equipment sold to New Gold (the **Parts**).
9. Following negotiations between the Debtors, the Monitor and New Gold, the parties settled on an agreed purchase price for the acquisition of the Parts on April 14, 2025 (the **Proposed Transaction**).
10. The Debtors and New Gold then proceeded to negotiate a sale and purchase agreement (the **Sale and Purchase Agreement**) for the purchase of the Parts, a copy of which is communicated herewith under seal, as **Exhibit R-6**.
11. The Proposed Transaction should be approved by this Court, namely for the following reasons:
 - a) The sale of the Non-Core Equipment to New Gold was previously approved by this Court on April 25, 2025, and the Proposed Transaction contemplates the sale of Parts complementary to and part of the Non-Core Equipment;
 - b) The Debtors and the Monitor have negotiated a purchase price which they believe is fair and reasonable;
 - c) The Secured Creditors have been consulted and support or otherwise do not oppose the Proposed Transaction; and
 - d) 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 Parts under a bankruptcy.
12. Considering the above, the Monitor supports the relief herein sought by the Debtors.
13. Therefore, the Debtors submit that it is appropriate and reasonable for this Court to approve the Proposed Transaction and to issue the draft AVO (Exhibit R-1).

III. **THE PURSUIT OF THE LIQUIDATION OF REMAINING NON-CORE ASSETS**

14. Following the sale of the Non-Core Mobile Camps and of the Non-Core Equipment, SDCI, with the assistance of the Monitor, analyzed strategic alternatives available

to pursue and complete the Liquidation of remaining Non-Core Assets. These remaining Non-Core Assets mainly consist of underground equipment and a few pieces of mobile equipment, as described in Exhibit A to the Commission Agreement (the **Assets**).

15. Stornoway and the Monitor received liquidation proposals from three (3) auctioneers, including TCL.
16. On February 3, 2025, SDCI hired TCL to appraise the remaining Non-Core Assets and in doing so, assisted SDCI and the Monitor in determining the best strategy for the Liquidation of same.
17. The strategy retained by SDCI and the Monitor was to implement a tendering process to solicit offers to auction the remainder of the Assets, except for the Red Zone and Tomra Sorting System, which are to be sold through a private negotiated sale.
18. SDCI and TCL then proceeded to negotiate the terms of the Commission Agreement for which SDCI now seeks this Court's approval, which terms are further described below. A copy of the Commission Agreement is communicated herewith as Exhibit R-7.
19. Pursuant to the Commission Agreement:¹
 - a) SDCI shall appoint TCL on an exclusive basis to sell the Assets, which are to be offered by online public auction (the **Auction**) or Private Negotiated Sale (only for the Red Zone and Tomra Sorting System) to be conducted by TCL and their agents;
 - b) The Commission Agreement shall commence on the date of the agreement and shall terminate on April 30, 2026;
 - c) TCL will provide SDCI with the sale proceeds, less applicable commission and Buyer's Premium and expenses, and taxes, along with the final reconciliation of Auction sales, when all Sold Non-Core Assets have been removed from the Premises barring any extraordinary circumstances.

¹ All capitalized terms in this section that are not otherwise defined shall have the meaning ascribed to them in the Commission Agreement.

- d) TCL shall receive a commission of the proceeds/sale value derived from any and all sales of the Assets. TCL will also charge and retain an industry standard Buyer's Premium of eighteen percent (18%) to the purchaser.
- 20. The Liquidation should be approved by this Court, namely because the Commission Agreement provides for a rigorous framework for the sale of the remainder of the Assets free and clear of all liens, claims, encumbrances and security interests and saving this Court's repeated intervention to approve each and every sale of Assets.
- 21. The Secured Creditors have been consulted and consent, or otherwise do not oppose, the sale of the Assets pursuant to the Commission Agreement.
- 22. Considering the above, the Monitor supports the relief herein sought by the Debtors.
- 23. Therefore, the Debtors submit that it is appropriate and reasonable for this Court to approve the Liquidation and to issue the draft Liquidation Order (Exhibit R-2).

IV. **ANCILLARY RELIEF**

A. The KERP Trust: Procedural Overview

- 24. On November 13, 2023, this Court issued the first amended and restated initial order (the **First ARIO**), which notably approved the KERP, authorized the Debtors to implement the KERP, and to make the payments contemplated therein, and granted to the beneficiaries of the KERP a charge, hypothec and security affecting the General Encumbered Property (as defined in the First ARIO) to the extent of the aggregate amount of \$480,000 (the **KERP Charge**).
- 25. On January 19, 2024, considering the potential end-of-life environmental obligations that could be incumbent on the Debtors and in an effort to definitively secure the payment of the KERP Amount and the initial Retention Amount, the Debtors sought the issuance of an order substituting the KERP Charge with the KERP Trust.
- 26. On January 24, 2024, the Court issued the second amended and restated initial order approving the KERP Trust as a substitute for the KERP Charge and ordering the deposit of the KERP Amount and the initial Retention Amount in trust with the Monitor or a third-party trust agent.
- 27. On April 4, 2024, this Court issued the third amended and restated initial order (the **Third ARIO**).

28. On May 28, 2024, this Court granted the Debtors' application and amended the Third ARIO namely to increase the Retention Amount, thereby increasing the KERP Amount.
29. On October 8, 2024, this Court issued the fourth amended and restated initial order (the **Fourth ARIO**).
30. On January 17, 2025, and again on February 24, 2025, the Honourable Karen M. Rogers, J.S.C. amended the Fourth ARIO to extend the stay of proceedings, leaving the KERP Amount as is each time.

B. The KERP Relief Sought

31. Since the issuance of the initial order, on October 27, 2023, the continued implication of the Debtors' key employees and officers has been essential to the restructuring efforts of the Debtors, particularly in the context of the ongoing discussions with Winsome and other stakeholders following the execution of the Call Option Agreement.
32. To secure the continued contribution of the Debtors' key officers, it has become necessary for the Debtors to incentivize them by increasing the Retention Amount.
33. The *Streamers* and Diaquem Inc., both of which are Secured Creditors unaffected in the CCAA proceedings, support or otherwise do not oppose the KERP relief herein sought by the Debtors.
34. Considering the above, the Monitor supports the relief herein sought by the Debtors.
35. The Debtors submit that it is appropriate and reasonable to increase the value of the KERP Trust to account for the necessary increase of the KERP Amount and the Retention Amount and to issue the draft KERP Trust Order communicated herewith (Exhibit R-3).

C. Sealing of Confidential Documents

36. Exhibits R-4 and R-6 communicated in support of the present application contain commercially sensitive information related to the remuneration of the Debtors' key officers and to the affairs of the Debtors.
37. It is respectfully submitted that the confidentiality of the information is such that it should be ordered that Exhibits R-4 and R-6 to the present application and

appendices A and B to the Monitor's Tenth Report (Exhibit R-5) be filed under seal until further order of this Court.

V. CONCLUSION

38. For the above reasons, the Debtors respectfully submit that it is both appropriate and reasonable that the relief herein sought be granted.
39. The Debtors request that the proposed orders (Exhibits R-1, R-2, R-3) be rendered executory notwithstanding appeal, notably given (i) the benefits of the Proposed Transaction and those contemplated by the performance of the Commission Agreement and (ii) the necessary contribution of the Debtors' key officers to the restructuring efforts.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present *Application for the Issuance of an Approval and Vesting Order, a Liquidation Order and Ancillary Relief*;

ISSUE an *Ordonnance d'approbation et de dévolution* for the Proposed Transaction substantially in the form of the draft order communicated herewith as Exhibit R-1;

ISSUE a Liquidation Order for the Assets substantially in the form of the draft order communicated herewith as Exhibit R-2;

ISSUE a KERP Trust Order substantially in the form of the draft order communicated herewith as Exhibit R-3;

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

Montréal, June 6, 2025

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 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 Approval and Vesting Order, a Liquidation Order and Ancillary Relief* are true.

AND I HAVE SIGNED



Patrick Sévigny

SOLEMNLY DECLARED before me by
technological means, this June 6, 2025.
The Affiant is in the city of Sainte-Barbe,
and the Commissioner of Oaths is in the
city of Châteauguay.



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, a Liquidation Order and Ancillary Relief* 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 **June 10, at 9:30 in room 16.01.**

To join the hearing virtually, use the following link:

16.01

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DO GOVERN YOURSELF ACCORDINGLY.

Montréal, June 6, 2025



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SUPERIOR COURT

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Commercial Division
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R.S.C., c. C-36, as amended)

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Monitor

**LIST OF EXHIBITS IN SUPPORT OF THE APPLICATION FOR THE ISSUANCE OF
AN APPROVAL AND VESTING ORDER, A LIQUIDATION ORDER AND ANCILLARY
RELIEF**

Exhibit R-1: Draft AVO;

Exhibit R-2: Draft Liquidation Order;

Exhibit R-3: Draft KERP Trust Order;

Exhibit R-4: Under seal, copy of the KERP Agreement and Retention Letters;

Exhibit R-5: Copy of the Tenth Report to the Court submitted by Deloitte Restructuring Inc.;

Exhibit R-6: Under seal, copy of the Sale and Purchase Agreement;

Exhibit R-7: Copy of the Commission Agreement;

Montréal, June 6, 2025

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DISTRICT OF MONTREAL

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Companies' Creditors Arrangement Act, R.S.C. (1985), c.
C-36, Sections 11 and 36

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