

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

SUPERIOR COURT

N°: 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 THIRD AMENDED AND RESTATED INITIAL ORDER AND APPROVAL 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 (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* (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 (the **First ARIO**), notably extending the Stay Period until January 25, 2024.
5. On January 24, 2024, the Court issued an Second Amended and Restated Initial Order (the **Second ARIO**), 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. For the reasons set out below, the Debtors hereby seek the issuance of a Third Amended and Restated Initial Order substantially in the form of the draft order communicated herewith as **Exhibit R-1** (the **Draft Third ARIO**) providing for, *inter alia*, the following relief:
 - a) Stay Extension: an extension of the Stay Period until **October 10, 2024** (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 Third ARIO to the model CCAA Initial Order and to the Second ARIO are respectively communicated herewith as **Exhibits R-2** and **R-3**.

9. Moreover, the Debtors hereby seek the issuance of a separate order approving the Call Option Agreement entered into between Winsome Resources Ltd. (**Winsome**) and the Debtors, substantially in the form of the draft order communicated herewith as **Exhibit R-4**, for the reasons set out below.

10. In support of this Application and the relief sought herein, the Monitor has prepared a report entitled *Fourth Report to the Court submitted by Deloitte Restructuring inc.* (the **Fourth Report**), a copy of which is communicated as **Exhibit R-5**.
11. 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

12. Since the issuance of the Initial Order, the Debtors have taken and implemented the following actions and measures in collaboration with the Monitor:
 - a) the Debtors have put the Renard Mine into 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) the Debtors, with the assistance of the Monitor, have been in contact with key suppliers and other suppliers, creditors and stakeholders seeking information, advising them of (i) the *status quo* resulting from the First ARIO and (ii) the Debtors' ongoing care and maintenance operations, as well as discussing any necessary arrangements in order for the present restructuring to follow its course in an orderly manner;
 - c) the Debtors, in accordance with the SISP Order, have mandated Deloitte Corporate Finance Inc. (the **SISP Agent**) to implement and conduct the SISP;
 - d) concurrently with the implementation of the SISP, the Debtors, with the assistance of the Monitor and in consultation with its secured creditors, have been reviewing the status, scope and nature of the potential end-of-life environmental obligations that may be incumbent on the Debtors depending on the outcome of the SISP; and
 - e) the Debtors completed the sale of their remaining diamond inventory (the **Inventory Sales**), in accordance with the terms of the First ARIO;

the whole as appears from the Monitor's Report (Exhibit R-5).

13. Since the issuance of the First ARIO, the Monitor has:
 - a) responded to inquiries received from various parties in respect of the restructuring process and the CCAA proceedings;
 - b) posted a copy of the CCAA Proceedings' materials, the Second Report of the Monitor as well as the First ARIO on its website;
 - c) published a second notice to creditors in La Presse+ (French version) and in the Globe and Mail National Edition (English version);
 - d) issued a press release setting out the Notice of the SISP with Canada Newswire as provided for in the SISP Order;
 - e) published the Notice of the SISP in La Presse+ (French version) and in the Globe and Mail National Edition (English version) as provided for in the SISP Order;
 - f) assisted the Debtors in their discussions with their main suppliers and other key stakeholders; and,
 - g) continued to work with the Debtors to develop and implement procedures to monitor the Debtors' activities, which include a daily review of their bank accounts' receipts and disbursements, as well as the preparation of revised cash-flow projections.

14. Moreover, as appears from the Monitor's Fourth Report (Exhibit R-5), since the issuance of the Second ARIO, the Monitor has also notably:
 - a) responded to inquiries received from various parties in respect of the Restructuring Process and the CCAA proceedings, while the inquiries pertaining to the SISP were directed to the SISP Agent;
 - b) posted a copy of the CCAA Proceedings' materials, the Third Report of the Monitor, the Second ARIO, the Order Approving Certain Payments to

Unaffected Creditors and the Order extending the Stay of Proceedings until April 5, 2024, on the Monitor's Website;

- c) assisted the Debtors in their discussions with their main suppliers and other key stakeholders, and also participated in meetings with several stakeholders;
- d) continued to work with Stornoway to develop and implement procedures to monitor the Company's activities in view of reporting to the Court;
- e) implemented a daily review of Stornoway bank accounts' receipts and disbursements;
- f) initiated the process to evaluate certain assets at the mine site;
- g) held meetings with insurer and broker to renew the insurance for the reclamation bond and extend its coverage until February 2025;
- h) had discussions with TSX Trust regarding the implementation of Stornoway's KERP trust account; and
- i) received service offerings for the phase 1 environmental site assessments and approved the retention by the Debtors of the services of WSP;

the whole as appears from the Monitor's Report (Exhibit R 5).

15. Finally, since the issuance of the Initial Order, the SISP Agent has been conducting the SISP, with the assistance of the Debtors and the Monitor, which SISP has resulted in the selection of a Successful Bid.

A. The SISP

16. On October 27, 2023, the Court issued the SISP Procedure Order, thereby approving the Bidding Procedures and naming the SISP Agent to, namely, assist the Debtors and the Monitor in implementing the SISP.
17. On November 3, 2023, the SISP Agent distributed the Solicitation Letter to potentially interested parties.
18. On January 26, 2024, the SISP Agent notified certain parties that their bid constituted a Phase 1 Satisfactory Bid.

19. The SISP Agent then initiated Phase 2 of the Pre-Filing SISP and the interested parties were invited to continue their due diligence and submit further indications of interest by February 23, 2024.
20. On March 9, 2024, Winsome executed a binding letter of interest.
21. On March 11, 2024, the SISP Agent notified Winsome that its bid was selected as Successful Bid.
22. The Debtors are now seeking the approval of the Successful Bid, as further described in Section III below.

III. APPROVAL OF THE CALL OPTION AGREEMENT

A. The Call Option Agreement

23. The Debtors are seeking the approval of the Call Option Agreement, as agreed between Winsome and the Debtors (the **Call Option Agreement**). A copy of the Call Option Agreement is filed **under seal** herewith as **Exhibit R-6**.
24. The Call Option Agreement provides for, *inter alia*, the following terms and conditions:
 - a) Winsome would acquire the right, in exchange of payment of a cash consideration provided for therein and which has been deposited in the Monitor trust account, to an exclusive call option to acquire, at Winsome's election and in its sole discretion, (the **Call Option**) either (i) all the issued capital of Stornoway from 1127 pursuant to a Court approved reverse vesting order (an **RVO Share Transaction**); or (ii) all or substantially all of the assets of Stornoway other than the Excluded Assets and the Non-Core Assets (as such terms are defined in the Call Option Agreement) (collectively, the **Purchased Assets**), pursuant to a Court approved approval and vesting order (an **AVO Asset Transaction**) (each of an RVO Share Transaction and an AVO Asset Transaction are a **Transaction**).
 - b) The initial call option period would commence on the date of Court approval of the Call Option Agreement and expire on September 30, 2024 (the **Call Option Period**). Winsome would have the ability to extend the Call Option Period in consideration for the payment of additional cash payments.

Ultimately, the Call Option Period may be extended until February 28, 2025, at Winsome's sole discretion.

- c) The consideration payable by Winsome further to exercising the Call Option and closing of a Transaction has already been negotiated and agreed upon by the parties. Such consideration, the amount of which is provided for in the Call Option Agreement, shall be paid, in Winsome's sole discretion, in cash, shares of Winsome or a combination of both. The first instalment would be payable on closing of the Transaction, and the second and third instalments would be payable respectively on the 12-month and 24-month anniversaries of closing.
- d) The Call Option Agreement 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 in order mainly to finance the care and maintenance of the Mine and preserve the assets during the Call Option Period;
- e) Pursuant to a Transaction, Winsome would assume all mine closure and characterization, rehabilitation, restoration and remediation obligations of the Debtors associated with the Mine, and all environmental obligations of the Debtors in relation to the Purchased Assets, to the extent required by applicable Laws or as otherwise determined by the Court.

B. Grounds for Approval of the Call Option Agreement

25. The Call Option Agreement should be approved by the Court, namely for the following reasons:
- a) The SISP was conducted by the SISP Agent, in consultation with the Monitor, the Debtors and the Secured Creditors, in accordance with the General Bidding Procedures;
 - b) The market has been thoroughly canvassed through a fulsome, fair and transparent process, and the transaction provided for in the Call Option Agreement, namely a right to an exclusive call option to proceed with the Transaction, represents the best transaction and outcome resulting from the SISP, for the benefit of the stakeholders of the Debtors as a whole;
 - c) Notably, the Call Option Agreement provides that the site and supporting infrastructure will be repurposed by Winsome if it elects to exercise its Call

Option, and in so doing, there is potential for employee retention with respect to certain employees, as well as potential for regional development;

- d) The Secured Creditors have been consulted and support the Call Option Agreement;
26. The Debtors and the Monitor consider that, based on the extensive work done by the SISP Agent and the result of the SISP as detailed in the Monitor's Fourth Report (Exhibit R-5), the Call Option Agreement is the best available alternative for the potential monetization of the Debtors' assets.
 27. Moreover, and as previously mentioned, pursuant to a Transaction, Winsome would assume all mine closure and characterization, rehabilitation, restoration and remediation obligations of the Debtors associated with the Mine, and all environmental obligations of the Debtors in relation to the Purchased Assets to the extent required by applicable Laws or as otherwise determined by the Court, for the benefit of all of the Debtors' stakeholders.
 28. Although the Call Option Agreement and the acquisition of the right to an exclusive option call provided therein (the **Call Option Transaction**) do not constitute a transaction providing for an outright sale of assets within the meaning of section 36 of the CCAA, the Call Option Agreement does provide indirectly for a Call Option Transaction leading to a potential disposition of assets outside of the ordinary course of business, with the acquisition by Winsome of a right to an exclusive option call to proceed with a Transaction.
 29. Should Winsome elect to exercise its Call Option in due course, the resulting Transaction would then be submitted to the Court's oversight and approval to ensure that the final Transaction Agreement and the vesting orders to be sought from the Court are appropriate under the CCAA.
 30. The Call Option Transaction provide for substantial amounts to be paid by Winsome in order to acquire the right to an exclusive option call to proceed with a Transaction, and for substantial expenses by the Debtors as well as a divestiture of Non-Core Assets to finance the Call Option Period and allow the potential Transaction to take place in a manner beneficial to its stakeholders. As such, the Approval Order sought will provide certainty to the parties allowing them to proceed with the Call Option Transaction.
 31. Considering the foregoing, the Monitor supports the relief sought herein by the Debtors.

32. Therefore, the Debtors submit that it is appropriate and reasonable for this Court to approve the Call Option Agreement and to issue the proposed Order (Exhibit R-4) (the **Approval Order**).

IV. **OTHER RELIEF SOUGHT**

A. **The Requested Stay of Proceedings**

33. The Debtors request an extension of the Stay Period until October 10, 2024.
34. 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, to be finalized between the Parties by no later than September 15, 2024 (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 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) initiate or continue discussions with stakeholders of the Debtors, namely with respect to SDCI's environmental obligations and related implications,] and
 - d) implement modified care and maintenance measures in the context of the contemplated Transaction and monetize of the Non-Core Assets during the Call Option Period, as further detailed in the Monitor's Fourth Report (Exhibit R-5).
35. The Debtors will report to the Court prior to the expiry of the contemplated Stay Period on October 10, 2024 as to the status of the Call Option Agreement, and any developments which might have occurred thereunder.
36. Based on the projections, as set out in Appendix B to the Monitor's Fourth Report (Exhibit R-5, under seal), and considering the current liquidities resulting from the Inventory Sales, the Debtors expect to have sufficient funding and liquidity to cover anticipated restructuring costs and expenses during the Extended Stay Period.

37. As such, the Monitor is of the view that the requested extension of the Stay Period is necessary and reasonable in the circumstances.
38. The Streamers and Diaquem, being the main secured creditors of the Debtors and unaffected creditors in the CCAA proceedings, support the requested extension.
39. 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

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

V. CONCLUSION

42. For the reasons set forth above, the Debtors believe it is both appropriate and necessary that the reliefs sought herein be granted.
43. Given the delays for closing, and the benefits of allowing Winsome to pursue its due diligence so as to maximize the opportunity for Winsome to exercise its Call Option as soon as possible, the Debtors request that the proposed Approval 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 Third Amended and Restated Initial Order and Approval Order*;

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

RENDER an Approval Order Creditors 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, March 28, 2024

Norton Rose Fulbright Canada LLP

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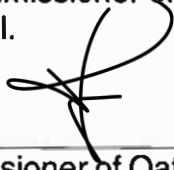
AFFIDAVIT

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 of a Second Amended and Restated Initial Order and Ancillary Relief* are true.

AND I HAVE SIGNED


Patrick Sévigny

SOLEMNLY DECLARED before me by technological means, this March 28, 2024. The Affiant is in the city of Longueuil 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 a the Issuance of a Third Amended and Restated Initial Order and 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 **April 4, 2024, at 9:30 a.m., in room 15.04.**

15.04	<p><u>Rejoindre la réunion Microsoft Teams</u> +1 581-319-2194 Canada, Québec (Numéro payant) (833) 450-1741 Canada (Numéro gratuit) ID de conférence : 436 929 434# Numéros locaux Réinitialiser le code confidentiel En savoir plus sur Teams Options de réunion Rejoindre à l'aide d'un dispositif de vidéoconférence teams@teams.justice.gouv.qc.ca ID de la conférence VTC : 1167171546 Autres instructions relatives à la numérotation VTC</p>
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DO GOVERN YOURSELF ACCORDINGLY.

Montréal, March 28, 2024

Norton Rose Fulbright Canada LLP

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-and-

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Debtors

-and-

DELOITTE RESTRUCTURING INC.

Monitor

LIST OF EXHIBITS
IN SUPPORT OF THE APPLICATION FOR THE ISSUANCE OF A THIRD AMENDED
AND RESTATED INITIAL ORDER AND APPROVAL ORDER

- Exhibit R-1:** Proposed Third Amended and Restated Initial Order;
- Exhibit R-2:** Redline document comparing the Proposed Third Amended and Restated Initial Order to the model CCAA initial order;
- Exhibit R-3:** Redline document comparing the Proposed Third Amended and Restated Initial Order to the Second Amended and Restated Initial Order;
- Exhibit R-4:** Proposed Approval Order;
- Exhibit R-5:** Fourth Report to the Court submitted by Deloitte Restructuring inc. (Appendices A and B **UNDER SEAL**);
- Exhibit R-6:** Call Option Agreement (**UNDER SEAL**)

Montréal, March 28, 2024

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-&-

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**APPLICATION FOR THE ISSUANCE OF A THIRD
AMENDED AND RESTATED INITIAL ORDER AND
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ORIGINAL

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