

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

**SUPERIOR COURT
(Commercial Division)**
(sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act,
RSC 1985, c C-36, as amended)

No.: 500-11-048114-157

**IN THE MATTER OF THE PLAN OF
COMPROMISE OR ARRANGEMENT OF:**

**BLOOM LAKE GENERAL PARTNER
LIMITED *ET AL.***

Debtors / Petitioners

-and-

**THE BLOOM LAKE IRON ORE MINE
LIMITED PARTNERSHIP *ET AL.***

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

-and-

9201955 CANADA INC.

Mise-en-cause

-and-

8901341 CANADA INC.

-and-

**CANADIAN DEVELOPMENT AND
MARKETING CORPORATION**

Intervenors

**DECLARATION OF INTERVENTION AND CONTESTATION OF THE
AMENDED MOTION FOR THE ISSUANCE OF AN APPROVAL AND
VESTING ORDER WITH RESPECT TO THE SALE OF THE CHROMITE SHARES
(Section 11 of the *Companies' Creditors Arrangement Act*
and articles 208 and following of the *Code of Civil Procedure*)**

TO THE HONOURABLE JUSTICE STEPHEN W. HAMILTON OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION, IN THE DISTRICT OF MONTRÉAL, THE INTERVENERS 8901341 CANADA INC. AND CANADIAN DEVELOPMENT AND MARKETING CORPORATION RESPECTFULLY SUBMIT AS FOLLOWS:

I. INTRODUCTION

1. 8901341 Canada Inc. is corporation governed by the laws of Canada (“**8901341**”). Canadian Development and Marketing Corporation is a corporation governed by the laws of Ontario (“**CDM Corp.**” and, jointly with 8901341, “**CDM**”);
2. CDM is filing this proceeding in contestation of the *Amended motion for the issuance of an approval and vesting order with respect to the sale of the chromite shares* (“**Amended Approval Motion**”) of the Petitioners Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited and Cliffs Québec Iron Mining ULC (“**Debtors**”), in the Court record;
3. For the reasons given below, CDM hereby requests that this Honourable Court:
 - a) Dismiss the Amended Approval Motion;
 - b) Order the Debtors / Petitioners to disclose the Purchase Price payable under the Amended Noront SPA (as defined below);
 - c) Order the Debtors / Petitioners to submit the terms and conditions of a new sales process for the Chromite Project (as defined below), acceptable to the Monitor (as defined below), to the Court for approval.

II. BACKGROUND

4. On January 27, 2015, this Honourable Court issued an Initial Order pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (“**CCAA**”), in respect of the Debtors (as amended, the “**Initial Order**”). FTI Consulting Canada Inc. was appointed as monitor to the Debtors (the “**Monitor**”);
5. 8901341 is a newly formed corporation and is the wholly owned subsidiary of CDM Corp. Mr. Mohammad Al Zaibak is the sole director and officer of both 8901341 and CDM Corp.;
6. As appears from the Amended Approval Motion, the Debtors are seeking approval of this Honourable Court to sell all right, title and interest in the Ring of Fire Shares (as defined in the Amended Approval Motion), referred to herein as the “**Chromite Assets**”;
7. As also appears from the Court record, the Debtors and related parties have engaged Moelis & Company as their financial advisor (the “**Financial Advisor**”);
8. On March 16, 2015, CDM presented its initial offer to Cliffs Greene B.V. (“**Cliffs Greene**”), Cliffs Netherlands B.V. (“**Cliffs Netherlands**”) and Cliffs Québec Iron Mining ULC (“**CQIM**”) to acquire the Chromite Assets (the “**Initial Offer**”) (Cliffs

Greene, Cliffs Netherlands and CQIM, collectively with certain Additional Sellers (as defined in the Initial Offer), are referred to below as “**Cliffs**”). The Initial Offer provided for, *inter alia*, an aggregate purchase price of \$23 million (\$21 million at closing with a balance of \$2 million payable by no later than December 31, 2015), was subject to a 45-day due diligence period, and did not include any financing conditions;

9. On March 17, 2015, Cliffs advised CDM that it had rejected the Initial Offer and was pursuing discussions with a third party;
10. On March 18, 2015, CDM presented an amended offer to Cliffs which modified the Initial Offer (the “**Amended Initial Offer**”) which provided for, *inter alia*, an aggregate purchase price of \$23 million (\$22 million at closing with a balance of \$1 million payable by no later than December 31, 2015), reduced the due diligence period to 25 days and did not include any financing condition. Other than as set forth above, the terms and conditions of the Amended Initial Offer were at least as favorable as the terms set forth in the Original Noront SPA. The Amended Initial Offer was rejected by Cliffs;
11. On March 23, 2015 Cliffs and Noront publicly announced that they had entered into a share purchase agreement (the “**Original Noront SPA**”), which provided for the purchase by Noront of the Chromite Assets for a purchase price of US\$20 million.;
12. On or about April 2, 2015, Cliffs filed a *Motion for the issuance of an approval and vesting order with respect to the sale of the chromite shares* (the “**First Approval Motion**”), in the Court record, seeking the Court’s approval of the Original Noront SPA and related orders. The Original Noront SPA included, *inter alia*, certain conditions precedent to closing in favour of Noront including, the closing of the financing required to fund the purchase price as well as, a requirement to obtain a key third party consent.
13. The Original Noront SPA included specific provisions regarding the consideration and treatment of unsolicited third party proposals for the Chromite Assets, the whole as described in more detail below ;
14. In light of the provisions of the Original Noront SPA and the confirmation by the Debtors and the Monitor, as enunciated in the First Approval Motion and the Monitor’s Third Report, to the effect that the Debtors could pursue and accept a Superior Proposal on April 13, 2015, representatives of CDM met with representatives of Cliffs to present a revised offer (the “**April 13 Offer**”);
15. The April 13 Offer was on the same terms and conditions as the Original Noront SPA, except that it provided for a purchase price of \$23 million payable in cash at closing, a significantly higher deposit amount, did not include a financing condition and did not permit Cliffs to terminate the share purchase agreement in favour of a superior proposal. In addition, CDM also presented letters from its financial institutions confirming the availability of funds to pay the purchase price in full at closing. The April 13 Offer included an expiry time of 5:00 p.m. (Cleveland time) on April 14, 2015. To facilitate a quick transaction, CDM provided an executed copy of a share purchase agreement reflecting the terms of the April 13 Offer;

16. During the evening of April 14, 2015 and after the expiry of the April 13 Offer, Mr. Carlo De Girolamo, a representative of the Financial Advisor, contacted Mr. Al Zaibak to advise him that Cliffs intended to run an auction, requesting that CDM and Noront submit revised offers to Cliffs by 5:00 p.m. on April 15, 2015. Mr. Al Zaibak advised Mr. De Girolamo that he did not understand why an auction was now being contemplated. The Original Noront Offer was unambiguous as to the process and ability of the Debtors to accept a Superior Proposal and terminate the Original Noront Offer;
17. Very late in the evening of April 14, 2015, counsel for Cliffs sent an email (the “**April 14 Email**”) to counsel for CDM, outlining a process for revised offers from CDM and Noront (the “**Supplemental Bid Process**”) which Supplemental Bid Process is more fully described in the Amended Approval Motion;
18. The April 14 Email confirmed that Cliffs had “determined in good faith and communicated to the Purchaser [*i.e.* Noront] after consultation with their outside legal counsel, financial advisors and the Monitor, that the [April 13 Offer] is, or could reasonably be expected to lead to, a Superior Proposal”;
19. The April 14 Email set forth a process described as aiming to “promote a fair and efficient process in light of the pending Court hearing date for the approval of the sale of the Purchased Shares and the terms of the March 22 SPA”;
20. The Supplemental Bid Process confirmed that Cliffs was seeking the “best and final offer” from each of CDM and Noront and that bidders were permitted to remove the ability of Cliffs to terminate a share purchase agreement on the basis of a superior proposal (as had been permitted by section 7.1(d) of the Original Noront SPA);
21. The Supplemental Bid Process confirmed that final bids were to be received by 5:00 p.m. (Toronto time) on April 15, 2015;
22. On April 15, 2015, CDM confirmed in writing to Cliffs that the expiry time of the April 13 Offer was extended to 12:00 noon (Cleveland time) on April 15, 2015. CDM did not receive an answer before the extended expiry time;
23. During the afternoon of April 15, 2015, the Financial Advisor reached out to counsel for CDM to confirm whether the April 13 Offer had expired or remained open for acceptance.
24. Given the uncertainty surrounding the entire process at this point and in order to avoid any argument relating to its failure to participate in this last minute auction, prior to the 5:00 p.m. deadline set for the Supplemental Bid Process, CDM submitted an amended offer to the Financial Advisor, the Monitor and Cliff’s legal counsel (the “**Final Offer**”). The Final Offer included a purchase price \$25, 275, 000, namely an increase of more than 25% over the purchase price contemplated in the Original Noront SPA.
25. The Final Offer was otherwise on substantially the same terms as the April 13 Offer (*ie.* no financing condition and no due diligence) and included an expiry time of 9:00 p.m. (Eastern time) on April 15, 2015;

26. At 8:45 p.m. (Eastern time) on April 15, 2015, the Financial Advisor requested an extension of the expiry time of the Final Offer until 2:00 p.m. on April 16, 2015 stating that Cliffs required certain clarifications in respect of the offers received. In particular, the Financial Advisor requested additional documentation to support the financial resources of CDM for the increased purchase price proposed in the Final Offer;
27. During the evening of April 15, 2015, counsel for CDM provided a response to the Financial Advisor regarding, among other things, its financial capacity to fund the total purchase price and seeking clarifications as to why the Final Offer had not been accepted and why such a long period of time was necessary to decide upon two final offers which were to have been submitted on the same basis, as set out in the Supplemental Bid Process;
28. The same evening, the Financial Advisor responded that the extension was at the request of Cliffs in order to exercise diligence in their review of the offers received, and to provide time to properly consult with the Financial Advisor and the Monitor;
29. On April 16, 2015, counsel for CDM forwarded an updated letter to the Financial Advisor from CDM's financial institution confirming the availability of funds to pay the purchase price under the Final Offer and also confirmed that the Final Offer remained open for acceptance by Cliffs until 2:00 p.m. on April 16, 2015. CDM did not receive a reply on its Final Offer before 2 p.m.;
30. It should be noted that the Final Offer had the support of two of the most impacted First Nation communities;
31. Late in the afternoon on April 16, 2015, and well after the expiry time requested by the Financial Advisor, the Financial Advisor sent a note to Mr. Al Zaibak stating that Cliffs determined that a revised offer submitted by Noront (the "**Noront Revised Offer**") represented a superior proposal, and determined to conclude a transaction with Noront;
32. At the hearing before this Honourable Court which took place on April 17, 2015, counsel for Cliffs stated that a new share purchase agreement in respect of the Noront Revised Offer had been executed at approximately 1:45 p.m. on April 17, 2015 (the "**Amended Noront SPA**");
33. It is apparent that the additional time could have only served one purpose, that is to allow Noront to perfect or improve any offer it may have submitted prior to the 5 pm deadline;
34. Cliffs served the Amended Approval Motion, seeking approval of the sale contemplated under the Amended Noront SPA, in the afternoon of April 18, 2015. The Amended Approval Motion states that the purchase price payable under the Amended Noront SPA was "materially higher" than the purchase price under the Final Offer, but fails to disclose the purchase price to be paid by Noront on the basis that the purchase price is "commercially sensitive for [Noront] and "the Sellers" (as defined in the Motion Materials) who are not CCAA Parties Included as an exhibit to the Amended Approval Motion was an executed copy of the Amended Noront SPA, where the purchase price to be paid thereunder has been redacted;

35. In the First Approval Motion, the purchase price to be paid under the Original Noront SPA namely US\$20,000,000 was fully disclosed in compliance with the principle of full disclosure in the context of CCAA proceedings;

III. FLAWED AND UNFAIR SALE PROCESS

The Flawed Process

36. As appears from the foregoing, the sales process followed by the Debtors in respect of the Chromite Assets was flawed in many regards and particularly unfair in its treatment of all offers submitted by CDM;
37. It is clear from the significant increase in purchase price both prior to and following the filing of Original Noront SPA that the Chromite Assets should have been the object of a duly endorsed court approved sale process in order to ensure a fair and transparent process and to maximize the return for the creditors;
38. In light of the terms of the Original Noront SPA, the First Approval Motion and the Monitor's Third Report, CDM presented its April 13 Offer, which on its face was clearly a Superior Proposal, with the expectation that the Debtors would follow the process outlined in the Original Noront SPA and terminate the Original Noront SPA and accept the April 13 Proposal.
39. To the detriment of CDM, the Debtors did not deal with the April 13 Offer in a fair way and as contemplated in their court materials but rather chose to engage the Supplemental Bid Process which effectively turned CDM into a "stalking horse" with absolutely none of the protections typically afforded to a stalking horse.
40. As indicated above, CDM had no alternative but to reluctantly participate in the Supplemental Bid Process which invariably only favored Noront.

Background to the Process

41. Prior to execution of the Original Noront SPA, Cliffs had made clear to CDM that, though CDM had presented a compelling offer without a financing condition, Cliffs had spent considerable effort in negotiating a transaction with Noront, and therefore was not willing to break off those discussions and consider a proposal from CDM. CDM respectfully submits that this approach coloured the entire Sales Process;
42. Though Cliffs' approach was worrisome, Cliffs did acknowledge the compelling nature of CDM's original offers and included in the Original Noront SPA provisions permitting Cliffs to terminate the agreement to enter into a "Superior Proposal". As such, the parties had clearly anticipated that an alternate and superior proposal might be presented to Cliffs for the Chromite Assets. However, Cliffs failed to follow the process it provided for;

Events following the April 13 Offer

43. The April 13 Offer represented a Superior Proposal for the Chromite Assets. Cliffs made that determination and advised CDM of the same. Cliffs should have terminated the

- Original Noront SPA and accepted the April 13 Offer. CDM takes particular exception to events that followed the April 13 Offer and to the particularly flawed process that ensued;
44. Notwithstanding the superiority of the April 13 Offer, Cliffs did not communicate with CDM in any manner until after the bid expiry time, at which time the Financial Advisor and Cliffs' legal advisors informed CDM about the Supplemental Bid Process.;
 45. The Supplemental Bid Process was provided to CDM late in the evening on April 14, 2015 with a deadline of less than 24 hours to submit revised bids;
 46. CDM has been provided no evidence that during this time Cliffs appropriately and fully considered the April 13 Offer. On the contrary, Cliffs and its advisors delayed their consideration of CDM's offer through a request for unnecessary clarifications of the April 13 Offer. No response was received by CDM until after its expiry;
 47. The Supplemental Bid Process was also inherently flawed, in that there was an imbalance of information between CDM and Noront. By virtue of the terms of the Original Noront SPA, Noront was advised by Cliffs of the material terms of the April 13 Offer, and therefore had information regarding CDM's latest proposal. Cliffs was aware of this and structured the auction with a very short timeframe in a manner that benefitted Noront while allowing Noront additional time to improve or perfect its offer;
 48. In the context where CDM had provided a clearly Superior Proposal, there was no rationale for Cliffs to run a process that benefitted one party over the others (whether marginally or otherwise). On the contrary, it was incumbent on Cliffs to accept the Superior Proposal as it said it would in its proceedings, or alternatively, run a more fulsome and fair process for all which would have required Cliffs to ensure that CDM and all interested parties be treated fairly;
 49. At the April 17, 2015 hearing, Cliffs advised this Honourable Court that under the terms of the Amended Noront SPA provided that an approval order had to be obtained from this Court no later than April 27, 2015, only five clear business days away. The hearing on the Amended Approval Motion was postponed to April 24, 2014. Given the terms of the Initial Order, it meant that if CDM or any other party wanted to object, it had to file its contestation the very next business day. CDM fears that this artificial urgency has been manufactured by any of Cliffs, Noront and the Sales Advisor, to attempt to place the Court before a *fait accompli* and curtail any debate;
 50. In light of the deficiencies in the Sales Process and Supplemental Bid Process, the criteria set out in section 36 of the CCAA have not been satisfied. The process leading to the proposed sale of the Chromite Project to Noront was not reasonable in the circumstances since it did not fairly treat all parties seeking to participate in the Sales Process. In addition to prejudicing CDM, this may have materially and adversely impacted recovery for creditors;

Lack of Disclosure of the Purchase Price

51. As noted above, the Amended Approval Motion includes a vague statement that the purchase price under the Amended Noront SPA represents commercially sensitive

information. CDM submits that this has been done for the purposes of prejudicing CDM's ability to intervene or propose an alternate transaction;

52. Sealing orders are sometimes granted as part of asset sales, notably to protect the identity of losing bidders. It is very rare, however, that the winning bid is sealed or that the price actually paid for an asset is not disclosed. Only the most compelling reasons can allow for such a derogation to the open court principle;
53. The Amended Approval Motion provides no justification for why it was acceptable for the purchase price to be disclosed in connection with the Original Noront SPA, but why the purchase price in the Amended Noront SPA must be redacted. No reason is provided for why the purchase price has suddenly become "commercially sensitive";
54. In addition, contrary to Cliffs' statement, as a public company, Noront is subject to extensive disclosure obligations under both applicable securities laws and the rules of the TSX Venture Exchange (the "TSXV") and have failed to meet such obligations;
55. In light of the foregoing, the redaction of the Purchase Price in the Amended Noront SPA by Cliffs was unjustified. The only plausible rationale for claiming that the purchase price is commercially sensitive is to ensure that alternate bidders for the Chromite Project are kept in the dark by not knowing the purchase price of the bid accepted by Cliffs.;

IV. NECESSITY OF THE COURT'S INTERVENTION

56. For the reasons set forth above, this Honourable Court should intervene in the best interest of all stakeholders and particularly for the benefit of creditors. As it was carried out, the Sales Process, and in particular the flawed and unfair Supplemental Bid Procedure, has lead to a vitiated result;
57. It is clear from the significant increase in purchase price both prior to and following the filing of Original Noront SPA that the Chromite Assets should have been the object of a duly endorsed court approved sale process in order to ensure a fair and transparent process and to maximize the return for the creditors;
58. Both CDM and several affected first nations group have raised significant concerns with the process followed by Cliffs and the Sales Advisor, including with respect to lack of transparency and unnecessary urgency. With a proper process, recovery for Creditors could have been significantly higher still;

V. CONCLUSION

59. CDM has a clear interest to bring forth this intervention and contestation because it was prejudiced by an incomplete and unfair sale process. Ultimately, CDM, the creditors collectively and possibly other interested parties stand to be adversely affected should the Amended Approval Motion be granted;
60. Given the foregoing reasons, CDM hereby requests that this Honourable Court receive its intervention, dismiss the Amended Approval Motion, order the Debtors to submit a new sales process for the Chromite Assets to the Court which is satisfactory to the Monitor

and order the Debtors to disclose the Purchase Price payable under the Amended Noront SPA.

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

1. **RECEIVE** the present *Declaration of intervention and contestation of the Amended motion for the issuance of an approval and vesting order with respect to the sale of the chromite shares* (the “**Intervention and Contestation**”);
2. **DECLARE** that all capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Intervention and Contestation;
3. **DECLARE** that the Sale Process for the Chromite Assets has been irreparably flawed and is therefore null and void;
4. **DISMISS** the Debtors / Petitioners’ Amended motion for the issuance of an approval and vesting order with respect to the sale of the chromite shares;
5. **ORDER** the Debtors / Petitioners to disclose the Purchase Price payable under the Amended Noront SPA within 24 hours of the order to be rendered herein;
6. **ORDER** the Debtors / Petitioners to submit the terms and conditions of a new sales process for the Chromite Assets, acceptable to the Monitor, to the Court for approval. within 5 business days of the order to be rendered;
7. **THE WHOLE** with costs against the Debtors / Petitioners.

Montréal, April 20, 2015.

Osler, Hoskin & Harcourt LLP

OSLER, HOSKIN & HARCOURT LLP
Attorneys for 8901341 Canada Inc. and Canadian
Development and Marketing Corporation

AFFIDAVIT

I the undersigned, Mohammad Al Zaibak, domiciled for the purposes hereof at Suite 2700, Brookfield Place, 161 Bay Street, Toronto, Ontario, M5J 2S1, solemnly declare the following:

- 1. I am the President of 8901341 Canada Inc. and the President and Chief Executive Officer of Canadian Development and Marketing Corporation;
- 2. I have taken cognizance of the attached *Declaration of intervention and contestation of the Amended motion for the issuance of an approval and vesting order with respect to the sale of the chromite shares* (the "Intervention and Contestation");
- 3. All of the facts alleged in the Intervention and Contestation are true.

AND I HAVE SIGNED:



Mohammad Al Zaibak

SOLEMNLY DECLARED BEFORE ME
IN Ottawa, Ontario ON THE
20TH DAY OF APRIL 2015.

M. Souweha
Michael Santos Souweha

Michael Santos Souweha,
a Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires April 9, 2016.

ATTESTATION OF AUTHENTICITY
(Article 82.1 of the *Code of Civil Procedure*)

I, the undersigned, Julien Morissette, attorney, exercising my profession at Osler, Hoskin & Harcourt LLP, situated at 1000 De La Gauchetière Street West, Suite 2100, Montréal, Québec, solemnly declare the following:

1. I am one of the attorneys of the Petitioners to the present *Declaration of intervention and contestation of the Amended motion for the issuance of an approval and vesting order with respect to the sale of the chromite shares* in Court file number 500-11-048114-157;
2. On April 20, 2015 at 4:15 p.m. (Montréal time), Osler, Hoskin & Harcourt LLP received by fax the Affidavit of Mohammad Al Zaibak, a duly authorized representative of the Interveners, dated the same day;
3. The copy of the Affidavit attached hereto is a true copy of the Affidavit of Mohammad Al Zaibak received by fax from Michael Souweha from the city of Ottawa, Ontario from fax number 613.235.2867;
4. All of the facts alleged herein are true.

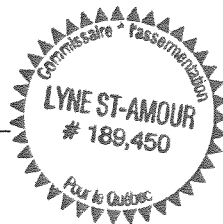
AND I HAVE SIGNED:



Julien Morissette

SOLEMNLY DECLARED BEFORE ME
IN MONTRÉAL, QUÉBEC
ON THE 20TH DAY OF APRIL 2015.


COMMISSIONER OF OATHS
FOR THE PROVINCE OF QUÉBEC



No: 500-11-048114-157

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ORIGINAL

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Mtre. Éric Préfontaine

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