

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT

Commercial Division

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

N^o: 500-11-048114-157

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

CLIFFS QUÉBEC IRON MINING ULC

Petitioner

-and-

RIO TINTO FER ET TITANE INC.

Mise-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

**MOTION FOR THE ISSUANCE OF AN APPROVAL AND VESTING ORDER
WITH RESPECT TO THE SALE OF CERTAIN ASSETS**
(Sections 11 and 36 *ff.* of the *Companies' Creditors Arrangement Act*)

**TO THE HONOURABLE STEPHEN W. HAMILTON, J.S.C. OR ONE OF THE HONOURABLE
JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION, IN AND FOR
THE DISTRICT OF MONTRÉAL, THE PETITIONER SUBMITS:**

1. BACKGROUND

1. On January 27, 2015, Mr. Justice Martin Castonguay, J.S.C., issued an Initial Order (the "**Bloom Lake Initial Order**") commencing these proceedings (the "**CCAA Proceedings**") pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**") in respect of Bloom Lake General Partner Limited ("**Bloom Lake GP**"), Quinto Mining Corporation ("**Quinto**"), 8568391 Canada Limited, Cliffs Québec Iron Mining ULC ("**CQIM**"), The Bloom Lake Iron Ore Mine Limited Partnership ("**Bloom Lake LP**") and Bloom Lake Railway Company Limited ("**Bloom Lake Railway Company**" and together with Bloom Lake LP, CQIM, Quinto, 8568391 Canada Limited and Bloom Lake GP, the "**Bloom Lake CCAA Parties**"), as appears from the Bloom Lake Initial Order, which forms part of the Court record and is communicated herewith for convenience as **Exhibit R-1**.
2. On April 17, 2015, Mr. Justice Hamilton issued, *inter alia*, an Order (the "**SISP Order**"), approving sale and investor solicitation procedures (the "**SISP**") in respect of the Bloom

Lake CCAA Parties, as appears from a copy of the SISP Order, which forms part of the Court record and is communicated herewith as **Exhibit R-2**.

3. The stay period (the "**Bloom Lake Stay Period**") afforded to the Bloom Lake CCAA Parties in the Bloom Lake Initial Order has been extended by further orders of this Court dated February 20, 2015, April 17, 2015, July 30, 2015, November 5, 2015, January 27, 2016, and April 20, 2016, all of which form part of the Court record and are communicated *en liasse* collectively herewith as **Exhibit R-3**. The Bloom Lake Stay Period has most recently been extended until September 30, 2016.
4. In accordance with the SISP Order, on January 27, 2016, Mr. Justice Hamilton issued an order approving a transaction (the "**Bloom Lake Transaction**") representing the divestiture of the right, title and interest of CQIM, Quinto, Bloom Lake GP, Bloom Lake LP and Bloom Lake Railway Company in and to substantially all of the assets relating to the Bloom Lake Mine and the Bloom Lake Railway, subject to certain excluded assets, which excluded assets included the 27 railcars that now form the subject of the proposed Transaction (defined below).
5. On April 11, 2016, the Bloom Lake Transaction closed.

2. **ORDERS SOUGHT**

6. CQIM hereby seeks the issuance of an Approval and Vesting Order substantially in the form of the draft Approval and Vesting Order communicated herewith as **Exhibit R-4** (the "**Draft Approval and Vesting Order**"), which provides, *inter alia*, for:
 - b) the Court's approval of the proposed transaction (the "**Transaction**") contemplated by the Asset Purchase Agreement dated as of June [X], 2016 (the "**Asset Purchase Agreement**") by and between CQIM, as vendor, and the Mise-en-cause Rio Tinto Fer Et Titane Inc., as purchaser (the "**Purchaser**"); and
 - c) the vesting of all of CQIM's right, title and interest in and to the Purchased Assets (as defined below) in the Purchaser, free and clear of all encumbrances (the "**Encumbrances**"), upon the issuance to CQIM and the Purchaser of a certificate by the Monitor in the form of Schedule "A" to the Draft Approval and Vesting Order (the "**Monitor's Certificate**"), the whole as provided in the Asset Purchase Agreement and as further detailed herein below.
7. A redacted copy of the Asset Purchase Agreement is communicated herewith as **Exhibit R-5**. Unless otherwise defined herein, all initially capitalized terms used in this Motion shall have the meaning given to them in the Asset Purchase Agreement.

3. **OVERVIEW OF THE PROPOSED TRANSACTION**

8. CQIM is an unlimited liability British Columbia company, with a registered office located at 595 Burrard Street, P.O. Box 49314, Three Bentall Centre, Suite 2600, Vancouver, British Columbia, as appears from the company profile communicated as **Exhibit R-6**.
9. CQIM owns 82.848% of the shares of Bloom Lake GP and 82.848% of the limited partnership units of Bloom Lake LP.

10. CQIM also holds a 100% interest in the following subsidiaries: Bloom Lake Railway Company, Quinto, 8568391 Canada Limited, Cliffs Canadian Shared Services Inc., 2313245 Ontario Inc. and Wabush Resources Inc.
11. Pursuant to the terms of the SISP Order, on January 27, 2016, Mr. Justice Hamilton issued an order approving the Bloom Lake Transaction representing the divestiture of substantially all of the assets of the Bloom Lake Mine and the Bloom Lake Railway, subject to certain excluded assets, including the Purchased Assets (as defined below).
12. The Bloom Lake Transaction closed on April 11, 2016.
13. As described in previous materials before this Court, pursuant to a master loan and security agreement between CQIM, Bloom Lake LP, Wabush Mines Joint Venture and Key Equipment Finance Inc., a financing arm of Key Bank ("**Key**"), Key advanced 10 loans to Bloom Lake LP and 3 loans to CQIM in the aggregate principal amount of USD \$164,829,438 to finance the acquisition of certain mining equipment and rail cars for use at or in connection with the Phase II expansion of the Bloom Lake Mine (the "**Key Bank Facility**"). The Key Bank Facility was guaranteed by Cliffs Natural Resources Inc. ("**CNR**").
14. Most of the loans advanced pursuant to the Key were subsequently assigned by Key to third party lenders. Following the commencement of these CCAA Proceedings, CNR, as guarantor, paid the respective amounts owing to each lender under the Key Bank Facility and received an assignment of their respective claims in the equipment, save with respect to Loan Schedules 2, 3, 5 and 6 which had been assigned to the Bank of Nova Scotia (collectively the "**BNS Loan Schedules**"). CNR, as guarantor, repaid in full the amounts owing pursuant to the BNS Loan Schedules and was subrogated by law in the rights of Bank of Nova Scotia. Accordingly, CNR is now the sole secured creditor with a security interest in the equipment secured by the Key Bank Facility.
15. Both prior to and following approval of the Bloom Lake Transaction, CQIM, with the assistance of the Monitor, has marketed the assets that were not included in the Bloom Lake Transaction, including those assets that were financed by the Key Bank Facility.
16. On or about July 16, 2015, CQIM received a binding proposal from the Purchaser for the acquisition of 27 Phase II railcars. However, as CQIM and the other Bloom Lake CCAA Parties were pursuing a going concern sale of the Bloom Lake Mine, such proposal was not pursued pending negotiations with the purchaser of the Bloom Lake Mine.
17. On or about March 22, 2016, the Purchaser inquired of the Monitor as to the status of the 27 Phase II railcars. At that time, the asset purchase agreement with the Bloom Lake Mine Purchaser had been executed and all of the assets subject to the Key Bank Facility, including 750 Phase II railcars that were intended for use in the Phase II expansion of the Bloom Lake Mine, were excluded from the Bloom Lake Transaction.
18. Negotiations ensued with the Purchaser for the purchase and sale of an amended list of 27 Phase II railcars as more particularly described in Schedule "B" to the Asset Purchase Agreement (the "**Purchased Assets**").
19. The Purchased Assets are presently being stored by CQIM at the Québec Gatineau Railway at CQIM's cost and expense.

20. The proposed Transaction contemplates the sale, transfer, and assignment by CQIM to the Purchaser of CQIM's right, title and interest in and to the Purchased Assets.
21. If approved, the proposed Transaction will result in the Purchased Assets being immediately removed from the Québec Gatineau Railway or the Purchaser entering into an agreement with the Québec Gatineau Railway for continued storage of the Purchased Assets at its own cost and expense.

4. THE SISP

22. As outlined above, Mr. Justice Hamilton approved the SISP in respect of the Bloom Lake CCAA Parties in April 2015.
23. The SISP contemplated two phases:
 - a) the first phase of the SISP contemplated delivery of non-binding letters of intent ("LOIs") by 5:00 p.m. (Montréal time) May 19, 2015 (the "**LOI Deadline**"); and
 - b) a subset of bidders with LOIs that met certain criteria would be invited to submit binding offers in the second phase by July 16, 2015 at 5:00 p.m. (Montréal time) (the "**Bid Deadline**"), written notice of which was provided to all such qualified bidders and posted on the Monitor's Website.
24. The Purchased Assets were made available in the SISP and liquidation proposals had also been sought by the Monitor for the Purchased Assets in parallel to the SISP.
25. As mentioned above, at the Bid Deadline, the Purchaser submitted a binding proposal for 27 Phase II railcars, which offer had not been pursued at that time given the determination by the Bloom Lake CCAA Parties to pursue a possible transaction for the going concern sale of the Bloom Lake Mine. When it was determined that the Purchased Assets would not form part of the assets subject to the Bloom Lake Transaction, CQIM, with the assistance of the Monitor, entered into discussions with the Purchaser for the purchase and sale of the Purchased Assets.
26. In consultation with the Monitor, CQIM has negotiated the Asset Purchase Agreement with the Purchaser, subject to Court approval.
27. The Monitor was consulted on and approved the steps taken to solicit proposals for the Purchased Assets, and is satisfied that the efforts to sell the Purchased Assets are reasonable in the circumstances.

5. THE ASSET PURCHASE AGREEMENT

5.1 The Purchaser

28. Rio Tinto Fer et Titane ("**RTFT**") mines and processes ilmenite in Quebec. It exploits a deposit at Lac Tio, near Havre-Saint-Pierre, and operates a metallurgical complex in Sorel-Tracy. At this facility, RTFT extracts high-quality titanium dioxide feedstock, pig iron, steel and metal powders from the ore.

29. All defined terms used in this *Section 5 The Asset Purchase Agreement* shall have the meanings given to them in the Asset Purchase Agreement unless otherwise defined in this Motion.

5.2 Purchase Price

30. The Purchase Price and the Deposit (as defined below) are redacted from the copy of the Asset Purchase Agreement communicated herewith (Exhibit R-5).
31. The Asset Purchase Agreement contemplates the sale of the Purchased Assets for a purchase price, which should remain confidential and is subject to certain adjustments in the event of material damage to the Purchased Assets ("**Purchase Price**").
32. The Purchased Assets are being sold on an "as is, where is" basis without legal warranty and at the risk of the Purchaser.
33. The redactions of the Purchase Price and the Deposit mentioned at paragraph 58 above are necessary for commercial reasons, as 723 similar Phase II railcars remain available for sale. CQIM submits that these redactions should remain until the balance of the Phase II Railcars are sold or otherwise realized by QCIM, the whole subject to further order of the Court.

5.3 Conditions to Closing

34. The Closing of the Transaction contemplated by the Asset Purchase Agreement is conditional on certain conditions, set forth in Section 8.1 and Section 8.2 thereof, including Court approval of the Asset Purchase Agreement, as contemplated by the Draft Approval and Vesting Order sought herein.
35. In addition to Court approval of the Draft Approval and Vesting Order, CQIM and the Purchaser require, among other things, the following customary closing conditions to be satisfied on or before the Closing of the Transaction:
- a) both the Purchaser and CQIM will have executed and delivered (or caused to be excluded and delivered) all closing documents required in connection with the Transaction;
 - b) during the interim period from execution of the Asset Purchase Agreement until Closing, no Governmental Authority shall have enacted, issued or promulgated any final or non-appealable Order or Law which has the effect of (a) making the proposed Transaction illegal, or (b) otherwise prohibiting, preventing or restraining the consummation of the proposed Transaction;
 - c) both CQIM and the Purchaser shall have performed all covenants, obligations and agreements required of them, respectively; and
 - d) each of the representation and warranties made by CQIM and Purchaser contained in the Asset Purchase Agreement shall be true and correct in all material respects (i) as of the Closing Date as if made on and as of such date or (ii) if made as of a date specified therein, as of such date.

5.4 Closing Mechanics

36. Pursuant to the Asset Purchase Agreement, the Purchaser will pay a deposit representing five percent (5 %) of the Purchase Price to the Monitor within three (3) Business Days of the date of the Asset Purchase Agreement (the “**Deposit**”).
37. Pursuant to the Asset Purchase Agreement, the Deposit will be applied against the Purchase Price upon Closing.
38. The Asset Purchase Agreement also provides that payment of the balance of the Purchase Price and applicable Transfer Taxes which are payable upon Closing, shall be paid in full by the Purchaser to the Monitor at Closing.
39. Upon receipt of payment in full of the Purchase Price and applicable Transfer Taxes on Closing, as well as receipt by the Monitor of the Conditions Certificates contemplated in Section 8.3 of the Asset Purchase Agreement, the Monitor shall issue its Monitor’s Certificate forthwith concurrently to CQIM and Purchaser, at which time Closing shall be deemed to have occurred. The Monitor shall then file, as soon as practicable, a copy of the Monitor’s Certificate with the Court (and shall thereafter provide a true copy of such filed certificate to CQIM and the Purchaser).
40. The Draft Approval and Vesting Order, among other things:
 - a) directs the Monitor to remit the Transfer Taxes received by it (if any are payable) from the Purchaser to CQIM, who will then remit those Transfer Taxes in accordance with Applicable Law; and
 - b) directs the Monitor to receive and hold the Purchase Price in accordance with the provisions set forth therein and, subject to the remittance of Transfer Taxes, to hold the Proceeds (as defined therein) on behalf of CQIM pending further order of the Court;
41. The Transaction is targeted to close by the date which is 3 Business Days following issuance by the Court of the Approval and Vesting Order, and must close no later than 5 Business Days after the date of the issuance by the Court of the Approval and Vesting Order, in each case subject to such extensions as may be mutually agreed upon by CQIM and the Purchaser.
42. Pursuant to the Asset Purchase Agreement, the Approval and Vesting Order must be obtained by no later than July 22, 2016 or such later date as CQIM and the Purchaser agree.
43. On Closing, the Purchased Assets will be delivered *in situ* to the Purchaser at the Québec Gatineau Railway. On Closing, the Purchaser will either immediately remove the Purchased Assets from the Québec Gatineau Railway, or enter into its own arrangements with Québec Gatineau Railway for the continued storage of the Purchased Assets at the Purchaser’s sole cost and expense.

5.5 Overall Assessment

44. CQIM is satisfied that the Purchase Price for the sale of the Purchased Assets is reasonable and fair in the circumstances.
45. CQIM is satisfied that the conditions to closing and the closing mechanics should lead to the closing of the proposed Transaction on an expedited basis should this Court approve this Motion and that the closing risks are minimal.
46. Furthermore, the following notable aspects of the Asset Purchase Agreement support the approval by the Court of the Asset Purchase Agreement and of the Transaction contemplated therein:
 - a) if the Transaction is terminated by CQIM due to a material breach by the Purchaser of any representation, warranty or covenant contained in the Asset Purchase Agreement, which breach has not been waived by CQIM, and (i) such breach is not curable and has rendered the satisfaction of any condition in section 8.2 of the Asset Purchase Agreement impossible to satisfy by the Outside Date; or (ii) if such breach is curable, CQIM has provided written notice of such breach to the Purchaser and such breach has not been cured within 10 days of receipt of such notice, then the Monitor will retain the Deposit for the benefit of CQIM;
 - b) if the Transaction is terminated for any other reason, the Deposit is returned to the Purchaser; however, the return of the Deposit will be the Purchaser's sole and exclusive remedy for any termination of the Asset Purchase Agreement;
 - c) the Purchased Assets are being sold on an "as is, where is" basis, without legal warranty;
 - d) on Closing, the Purchaser will (i) immediately remove the Purchased Assets from the Québec Gatineau Railway, or (ii) provide satisfactory evidence to CQIM that the Purchaser has entered into its own arrangements with Québec Gatineau Railway for the continued storage of the Purchased Assets at the Purchaser's sole cost and expense;
 - e) if the Purchased Assets are removed from the Québec Gatineau Railway, the Purchaser is entirely responsible for removing the Purchased Assets from the Québec Gatineau Railway, transporting the Purchased Assets offsite and supplying all equipment, personnel and materials required to carry out the foregoing, all at the Purchaser's own risk and peril and at the Purchaser's sole cost and expense, without liability of any kind or nature in respect thereof to CQIM; and
 - f) the Purchaser has also indemnified CQIM, CQIM's Affiliates and their respective Representatives for any Damages in connection with or related in any manner whatsoever to (i) the payment of any Taxes (including Transfer Taxes) which may be assessed against CQIM, and (ii) the Purchaser's access to the Québec Gatineau Railway, including for the removal and transportation or any use or resale of the Purchased Assets by the Purchaser.

47. As assignee of the Key Bank Facility and the sole creditor with a security interest and lien over the Purchased Assets (other than the charges created by the Orders issued in the CCAA Proceedings), CNR has been consulted with respect to the proposed Transaction and CNR approves of the proposed Transaction.
48. CQIM is satisfied that the criteria set out in section 36 of the CCAA have been met and understand that the Monitor supports the Transaction and will file a report in respect thereof.

6. CONCLUSIONS

49. In light of the foregoing, CQIM hereby respectfully seeks the issuance of an Order substantially in the form of the Draft Approval and Vesting Order (Exhibit R-4), which provides for the Court's approval of the Asset Purchase Agreement and of the Transaction contemplated therein.
50. CQIM further submits that the notices given of the presentation of the present Motion are proper and sufficient because:
 - a) Other than CNR and the charges created by the Orders issued in these Proceedings, CQIM is not aware of any third parties having a lien or charge over the Purchased Assets;
 - b) updated searches conducted at the following registries against CQIM did not disclose any third parties having registered a security interest over CQIM's interest in the Purchased Assets:
 - i) RPMRR (Québec) search results summary on CQIM's movable property, communicated herewith as **Exhibit R-7**; and
 - ii) Personal Property Security Act (British Columbia) search results summary on CQIM's movable property, communicated herewith as **Exhibit R-8**; and

Copies of the raw search results for each of Exhibits R-7 to R-8 will be available at the hearing of the motion.

51. The present Motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Motion;

ISSUE an order substantially in the form of the Draft Approval and Vesting Order (Exhibit R-4) communicated in support hereof;

WITHOUT COSTS, save and except in case of contestation.

Montréal, June 17, 2016



BLAKE, CASSELS & GRAYDON LLP
Attorneys for the Petitioner

AFFIDAVIT

I, the undersigned, **CLIFFORD T. SMITH**, the Executive Vice-President and a director of Cliffs Quebec Iron Mining ULC, having a place of business at 1 Place Ville Marie, Bureau 3000, Montréal, Québec, H3B 4N8, solemnly affirm that all the facts alleged in the present *Motion for the Issuance of an Approval and Vesting Order with respect to the Sale of Certain Assets* are true.

AND I HAVE SIGNED:



CLIFFORD T. SMITH

SOLEMNLY DECLARED before me at
Cleveland, Ohio, on this 17th day of
June, 2016



Notary Public

ADAM D. MUNSON, Atty.
NOTARY PUBLIC
STATE OF OHIO
My Commission Has No
Expiration Date
Section 147.03 R.C.

NOTICE OF PRESENTATION

TO: Service List

AND: Rio Tinto Fer et Titane Inc.
c/o M^{re} Lisa Miller
Legal Counsel
Rio Tinto
400 -1190 avenue des Canadiens de Montréal
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TAKE NOTICE that the present *Motion for the Issuance of an Approval and Vesting Order with respect to the Sale of Certain Assets* will be presented for adjudication before the Honourable Stephen W. Hamilton, J.S.C., or another of the honourable judges of the Superior Court, Commercial Division, sitting in and for the district of Montréal, in the Montréal Courthouse located at 1, Notre-Dame Street East, Montréal, Québec, on **June 28, 2016**, at a time and in a room to be determined.

DO GOVERN YOURSELF ACCORDINGLY.

Montréal, June 17, 2016



BLAKE, CASSELS & GRAYDON LLP
Attorneys for the Petitioner

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

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

N°: 500-11-048114-157

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Mise-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

LIST OF EXHIBITS

(In support of the *Motion for the Issuance of an Approval Order
with respect to the Sale of Certain Assets*)

- R-1 Bloom Lake Initial Order, dated January 27, 2015
- R-2 SISP Order dated, April 17, 2015
- R-3 *En liasse*, Orders extending the Stay Period
- R-4 Draft Approval And Vesting Order
- R-5 Redacted Asset Purchase Agreement
- R-6 Company profile for CQIM
- R-7 RPMRR (Québec) search results summary on CQIM movable property
- R-8 Personal Property Security Act (British Columbia) search results summary on CQIM

The exhibits are available at the following link:

<https://blakes.sharefile.com/d-s95a8171bb154554b>

Montréal, June 17, 2016


BLAKE, CASSELS & GRAYDON LLP
Attorneys for the Petitioner

N° : 500-11-048114-157

**SUPERIOR COURT
DISTRICT OF MONTREAL**
(Commercial Division)

**IN THE MATTER OF THE PLAN OF COMPROMISE
OR ARRANGEMENT OF:
CLIFFS QUÉBEC IRON MINING ULC**

Petitioner

and-

RIO TINTO FER ET TITANE INC.

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-and-

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Monitor

**MOTION FOR THE ISSUANCE OF AN APPROVAL
AND VESTING ORDER WITH RESPECT TO THE
SALE OF CERTAIN ASSETS, AFFIDAVIT, NOTICE
OF PRESENTATION ET EXHIBITS R-1 TO R-8**
(Sections 11 and 36 ff. CCAA)

ORIGINAL

M^{re} Bernard Boucher **BB-8098**

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