

Canada
Province of Québec
District of Montréal

Superior Court
Commercial Division
(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act)

N°: 500-11-048114-157

**In the Matter of the Plan of Compromise or
Arrangement of:**

**The Bloom Lake Iron Ore Mine Limited
Partnership**

and

Wabush Resources Inc.

and

Wabush Iron Co. Limited

Petitioners

and

FTI Consulting Canada Inc.

Monitor

and

Ritchie Bros Auctioneers (Canada) Ltd.

and

Québec Iron Ore Inc.

Mises-en-cause

***De Bene Esse* Notice of Objection of Québec Iron Ore Inc. to the
Motion for the Issuance of an Approval and Vesting Order with respect
to the Sale of certain Assets of the Petitioners dated September 9, 2016**

To the Honourable Stephen W. Hamilton, JSC or one of the Honourable judges of the Superior Court, sitting in Commercial Division, in and for the District of Montréal, the Mise-en-cause Québec Iron Ore Inc. submits:

I. INTRODUCTION

1. The Bloom Lake Iron Ore Mine Limited Partnership ("**Bloom Lake LP**") and other CCAA parties filed a "*Motion for the Issuance of an Approval and Vesting Order with respect to the*

Sale of certain Assets" (the "**Motion**") seeking the authorization to sell their right, title and interest in and to certain equipment, including namely the "**Bloom Lake Mine Equipment**" defined as "five (5) Komatsu 830E haul trucks located at the Bloom Lake Mine as more particularly described in Schedule "B"", to Ritchie Bros Auctioneers (Canada) Ltd. ("**Ritchie**"), as per the Asset Purchase Agreement dated as of September 1, 2016 filed as Exhibit R-7 to the Motion (the "**Ritchie APA**").

2. As part of the current CCAA proceedings, Québec Iron Ore Inc. ("**QIO**") acquired from Bloom Lake LP and other CCAA parties substantially all of the assets relating to the Bloom Lake Mine and the Bloom Lake Railway, subject to certain excluded assets, the whole pursuant to an Asset Purchase Agreement dated December 11, 2015 (the "**QIO APA**") filed herewith as **Exhibit R-1** and approved by this Court on January 27, 2016.
3. The transactions contemplated by the QIO APA closed on April 11, 2016 (the "**Bloom Lake Transaction**").
4. QIO submits that the "right, title and interest of [Bloom Lake LP] in the Bloom Lake Mine Equipment" being the object of the Ritchie APA do not include certain parts which have been acquired by QIO as part of the Bloom Lake Transaction, more specifically the mining tires and rims which do not form part of the standard equipment relating to Komatsu 830E haul trucks and which had been acquired separately by Bloom Lake LP.
5. As such, QIO does not *per se* object to the proposed sale of the "right, title and interest of [Bloom Lake LP] in the Bloom Lake Mine Equipment", but files the present *de bene esse* notice of objection to seek a declaration that the transaction pursuant to the Ritchie APA does not contemplate the sale of the tires and rims which QIO acquired as part of the Bloom Lake Transaction.

II. DESCRIPTION OF KOMATSU 830E TRUCKS AND PROPOSED TRANSACTION WITH RITCHIE

6. It is an usage in the mining industry that purchased heavy mining equipment such as Komatsu 830E trucks forming the "Bloom Lake Mine Equipment" under the Ritchie APA does not include tires and rims, as namely appears from the proposal of SMS Equipment Inc., a Komatsu dealer, for a Komatsu 830E-1AC haul truck dated September 26, 2011, communicated herewith as **Exhibit R-2**.
7. It is QIO's understanding that, in the current case and more specifically in connection with the five (5) Komatsu 830E trucks forming the "Bloom Lake Mine Equipment", Bloom Lake LP did not depart from such usage and acquired the tires and rims separately from the actual trucks, from a separate supplier (likely Michelin). As part of the ongoing communications, QIO has asked counsel for Bloom Lake LP and the Monitor the documentation in connection with the acquisition by Bloom Lake LP of the five (5) Komatsu 830E trucks, but has not yet received it at the time of preparing the present *de bene esse* notice of objection.
8. It is important to point out that equipment such as Komatsu 830E trucks is always delivered in parts; it can only be assembled on site. As such, the fact that the Ritchie APA does not encompass the tires and rims is not problematic from a practical point of view because said agreement provides that the Bloom Lake Mine Equipment are to be dismantled, removed and transported off the Bloom Lake Mine site by Ritchie.

III. THE QIO APA

9. Under the QIO APA (Recital D; Section 1.1, *sub verbo* “Businesses”, “Purchased Assets”), the purchased assets include those assets related to the Bloom Lake Mine as set out in Schedule “O” to the Bloom Lake Purchase Agreement, but excluding certain assets (the “**Excluded Assets**”).
10. The Schedule “O” to Bloom Lake Purchase Agreement (Sections 3, 5) provides that the following assets are included in the assets acquired by QIO:
 - a. All inventories of stock-in-trade and merchandise including materials, supplies, work-in-progress, finished goods, tooling, service parts and purchased finished goods related to the Bloom Lake Mine; and
 - b. All equipment of the Vendors (other than Cliffs Québec Iron Mining ULC) related to the Bloom Lake Mine including, for greater certainty (i) any spare parts related to the Bloom Lake Mine and (ii) any mobile equipment related to the Bloom Lake Mine, but expressly excluding certain equipment (the “**Excluded Equipment**”).
11. As the tires and rims are stock-in-trade, merchandise, spare parts and/or equipment related to the Bloom Lake Mine, they are included in the assets acquired by QIO.
12. Under the Bloom Lake Purchase Agreement (Section 1.1, *sub verbo* “Excluded Assets”, “Excluded Equipment”; Schedule “H”, Section 19; Schedule “I”, Section 1), the Excluded Assets and Excluded Equipment include “[a]ll equipment of the Vendors financed by Key Bank [...] including, for greater certainty, [...] 5 Komatsu 830 trucks”.
13. It is QIO’s understanding that the financing obtained from Key Bank pertained to the Komatsu 830E trucks acquired from the dealer SMS Equipment Inc., which exclude the tires and rims. As indicated above, QIO has asked counsel for Bloom Lake LP and the Monitor the documentation in connection with the acquisition by Bloom Lake LP of the five (5) Komatsu 830E trucks, but has not yet received it at the time of preparing the current *de bene esse* notice of objection.
14. As such, given that the tires and rims were not paid out of the Key Bank financing and that it is an usage in the mining industry that heavy mining equipment, such as the Komatsu 830E trucks, does not include tires and rims, the latter are not Excluded Equipment under the QIO APA and were therefore purchased by QIO.
15. QIO had always intended acquiring the tires and rims as part of the QIO APA, and it expects to be using such tires and rims as part of its mining operations once the activities restart at the Bloom Lake Mine. While in operations, it is not rare that a replacement tire of this type is needed as frequently as once a week.

IV. THE *DE BENE ESSE* NOTICE OF OBJECTION

16. On September 9, 2016, the Petitioners notified the Motion to the service list and, on September 16, 2016, the Monitor filed its 23rd Monitor’s Report in support of same.
17. As QIO is of the view that it owns the tires and rims currently installed on the five (5) Komatsu 830E trucks located at the Bloom Lake Mine that will be dismantled, and since both the Motion

and the 23rd Monitor's Report are silent with respect to said tires and rims, on September 16, 2016, the QIO and its counsel have sought from Bloom Lake LP and the Monitor certain clarifications regarding the Ritchie APA, as appears namely from a copy of the emails exchanged between Jocelyn Perreault, Bernard Boucher, Sylvain Rigaud, David Cataford and Steven Bissel, communicated herewith *en liasse* as **Exhibit R-3**.

18. Based on the most recent communications between counsel for Bloom Lake LP, the Monitor and QIO, QIO understands that the position of the parties differ on the extent of the right, title and interest (or lack thereof) of Bloom Lake LP on the tires and rims related to the five (5) Komatsu 830E trucks constituting the Bloom Lake Mine Equipment under the Ritchie APA, such that QIO should file the present *De Be Esse* Notice of Objection, which is not a contestation of the Motion given that QIO does not oppose to the sale of the right, title and interest of Bloom Lake LP in the Bloom Lake Mine Equipment.
19. Although QIO does not currently have all of the relevant information, the present *de be esse* notice of objection is being notified to the service list on the date that is three calendar days prior to the return date of the Motion, in accordance with the Bloom Lake Initial Order and the Wabush Initial Order and in light of a 24-hour extension granted by Bloom Lake LP and the Monitor. QIO may amend the present *de be esse* notice of objection in light of certain information received earlier on this day or of information which has been requested, namely regarding the acquisition of the five (5) Komatsu 830E trucks and of the tires and rims by Bloom Lake LP (in order to confirm that only the Komatsu 830E trucks were paid out of the Key Bank financing, as is the understanding of QIO).

Wherefore, may it please this court:

DECLARE that the transaction contemplated by the Asset Purchase Agreement dated as of September 1, 2016 by and between The Bloom Lake Iron Ore Mine Limited Partnership, Wabush Resources Inc., and Wabush Iron Co. Limited, as vendors, and Ritchie Bros Auctioneers (Canada) Ltd., as purchaser, a redacted copy of which was filed as Exhibit R-7 to the Petitioners' Motion for the Issuance of an Approval and Vesting Order with respect to the sale of certain assets, does not contemplate the sale and purchase of the 30 mining tires and rims of the five Komatsu 830E haul trucks located at the Bloom Lake Mine;

THE WHOLE WITH COSTS.

Montréal, September 20, 2016



McCarthy Tétrault LLP
Lawyers for Québec Iron Ore Inc.

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Mises-en-cause

List of Exhibits

Exhibit	Description
R-1	Asset Purchase Agreement entered into on December 11, 2015 between Cliffs Québec Iron Mining ULC, Quinto Mining Corporation, Bloom Lake General Partner Limited, Bloom Lake Railway Company Limited and The Bloom Lake Iron Ore Mine Limited Partnership, as vendors, Québec Iron Ore Inc., as purchaser, and Champion Iron Limited

- R-2 Proposal of SMS Equipment Inc. for a Komatsu 830E-1AC haul truck dated September 26, 2011
- R-3 Email chain between Jocelyn Perreault, Bernard Boucher, Sylvain Rigaud, David Cataford, and Steven Bissell of September 16-18, 2016

Montréal, September 20, 2016

A handwritten signature in black ink that reads "McCarthy Tétrauld". The signature is written in a cursive, slightly slanted style.

McCarthy Tétrauld LLP
Lawyers for Québec Iron Ore Inc.

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MISES-EN-CAUSE

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ORIGINAL

Me Jocelyn Perreault 514-397-7092 / Me Gabriel Faure 514-
397-4182 / c/m 210599-470387
notification@mccarthy.ca

BC0847

McCarthy Tétrault LLP

Avocats • Agents de brevets et marques de commerce
Barristers & Solicitors • Patent & Trade-mark Agents

Suite 2500
1000 De La Gauchetière Street West
Montréal (Québec) H3B 0A2
Tel.: 514 397-4100
Fax: 514 875-6246