

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

**RETURN ON INNOVATION CAPITAL LTD., as agent for ROI FUND INC., ROI SCEPTRE CANADIAN
RETIREMENT FUND, ROI GLOBAL RETIREMENT FUND and ROI YIELD PRIVATE PLACEMENT FUND and
ANY OTHER FUND MANAGED BY ROI from time to time**

Applicants

- and -

**GANDI INNOVATIONS LIMITED
GANDI INNOVATIONS HOLDINGS LLC
GANDI INNOVATIONS LLC
GANDI INNOVATIONS HOLD CO. and
GANDI SPECIAL HOLDINGS LLC**

Respondents

THIRTEENTH REPORT OF THE MONITOR

February 14, 2011

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1 PURPOSE

1.1 The Monitor's Thirteenth Report is filed in response to the motion by Hary Gandy ("Hary"), James Gandy ("James", and together with Hary, the "Gandys") and Trent Garmoe ("Garmoe") for an order authorizing these claimants to file their contingent claims against the Gandhi Group (as defined below) approximately 6 months after the Claims Bar Date (as defined below).

2 INTRODUCTION AND BACKGROUND

2.1 Background

2.1.0 Gandhi Innovations Limited ("Gandhi Canada"), Gandhi Innovations Holdings LLC, ("Gandhi Holdings"), and Gandhi Innovations LLC ("Gandhi San Antonio") (collectively referred to herein as "Gandhi") obtained protection from their creditors under the Companies' Creditors Arrangement Act ("CCAA") pursuant to an Order (the "Initial Order") of this Honourable Court dated May 8, 2009 (the "Filing Date"). A copy of the Initial Order is attached as Appendix A.

2.1.1 On November 25, 2009, this Honourable Court added Gandhi Innovations Hold Co. ("Gandhi Holdco") and Gandhi Special Holdings LLC ("Gandhi Special", and together with Gandhi and Gandhi Holdco, the "Gandhi Group") as debtors to the Gandhi CCAA proceeding.

2.1.2 The Initial Order appointed BDO Dunwoody Limited as the Monitor of Gandhi (the "Monitor"). Pursuant to Articles of Amendment effective November 12, 2009, the corporate name of BDO Dunwoody Limited was changed to BDO Canada Limited.

2.1.3 Gandhi also obtained protection from their creditors in the United States ("U.S.") by applying for and obtaining recognition of the within proceeding as a foreign main proceeding pursuant to Chapter 15 ("Chapter 15") of the United States Bankruptcy Code (the "Chapter 15 Proceeding"). An Order of the United States Bankruptcy Court for the Western District of Texas San Antonio Division (the "U.S. Court") recognizing this proceeding as a foreign main proceeding pursuant to Chapter 15 was issued June 5, 2009.

- 2.1.4 On November 25, 2009, this Court approved the sale of substantially all of the business and assets of the Gandhi Group to Agfa Corporation and Agfa Inc. (collectively referred to as “Agfa”) pursuant to the terms of an Agreement of Purchase and Sale made as of November 15, 2009 among Gandhi and Agfa (“the Sale Agreement”) and granted an Order vesting title to the purchased assets in and to Agfa (the “Approval and Vesting Order”). Shortly thereafter, the Sale Agreement was amended to include Gandhi Holdco and Gandhi Special as parties to such agreement and the Monitor sought revisions to the Approval and Vesting Order to reflect such amendments which order was issued on December 10, 2009.
- 2.1.5 On January 15, 2010 (the “Closing Date”), the Monitor closed the sale of substantially all of the business and assets of the Gandhi Group to Agfa (the “Sale Transaction”).
- 2.1.6 The total estimated purchase price (the “Purchase Price”) from the sale to Agfa is approximately \$40.4 million USD and is comprised of both a contingent and a non-contingent portion. Sale proceeds totaling \$25.0 million USD were received by the Monitor on closing. Pursuant to the Sale Agreement, the balance of the Purchase Price is payable over a period of two years.
- 2.1.7 On March 9, 2010, this Court granted an order which, *inter alia*, expanded the Monitor’s powers to allow the Monitor to file, on behalf of the Gandhi Group, a plan of compromise or arrangement under the CCAA or a proposal under the Bankruptcy and Insolvency Act (the “Expanded Powers Order”). A copy of the Expanded Powers Order is attached as **Appendix B**.
- 2.1.8 On March 9, 2010, this Honourable Court issued an order (the “Claims Procedure Order”) authorizing the Monitor to conduct a process for calling and determining claims of the Gandhi Group’s creditors (the “Claims Process”). Among other things, the Claims Procedure Order established June 30, 2010 as the Claims Bar Date. A copy of the Claims Procedure Order is attached as **Appendix C**.

2.1.9 On March 31, 2010, the U.S. Court granted an order recognizing, among others, the Claims Procedure Order and the Expanded Powers Order, a copy of which is attached hereto as Appendix D.

2.2 Claims Process and Plan of Compromise and Arrangement

2.2.0 The Claims Process is now substantially complete, with the exception of a few unresolved claims. The details of the Claims Process and disputed claims are set out in detail in the Monitor's Twelfth Report to the Court dated December 3, 2010 previously filed with this Court. A copy of the Monitor's Twelfth Report without exhibits is attached hereto as Appendix E.

2.2.1 In total 213 claims were filed with the Monitor of which 205 were accepted by the Monitor. The total value of accepted claims against the Gandi Group is CAD\$73,153,659. In addition, two claims are currently disputed. The value of the disputed claims is CAD\$1,677,972.

2.2.2 For reasons set out in the Monitor's Twelfth Report, including, the integrated nature of the Gandi Group's business and operations, the Monitor determined that a consolidated plan of compromise and arrangement represents the most equitable distribution for the unsecured creditors of the Gandi Group.

2.2.3 Assuming the Purchase Price is received by the Monitor in full, the Monitor indicated in the Twelfth Report that the consolidated plan of compromise and arrangement would generate a distribution to unsecured creditors on a *pro rata* basis of approximately 26.8% of the value of their claims.

2.2.4 On December 3, 2010, the Monitor served motion materials in support of a motion returnable December 10, 2010, for an order, *inter alia*, authorizing the Monitor to file a consolidated plan of compromise and arrangement of the Gandi Group and call a meeting of the Gandi Group's creditors to consider and vote on the plan.

2.2.5 At the request of the Gandys and Garmoe, discussed in greater detail below, the December 10, 2010 motion was adjourned to January 4, 2011.

- 2.2.6 On January 4, 2011, this Court approved an order authorizing the Monitor to file a consolidated plan of compromise and arrangement and call a meeting of creditors of the Gandhi Group to consider and vote on the plan. On January 17, 2011, this order was amended to allow the Monitor to serve materials in connection with the creditors meeting by way of registered mail. A copy of the Amended Plan Filing and Meeting Order is attached hereto as **Appendix F**.
- 2.2.7 On January 26, 2011, the U.S. Court recognized the Amended Plan Filing and Meeting Order. A copy of the U.S. Order is attached hereto as **Appendix G**.
- 2.2.8 On January 27, 2011, pursuant to the terms of the Amended Plan Filing and Meeting Order, the Monitor gave notice to creditors holding proven claims of the Creditors' Meeting currently scheduled for February 22, 2011.
- 2.2.9 If the plan is approved by the creditors at the Creditors' Meeting, the Plan Filing and Meeting Order directed the Monitor to bring a motion seeking an order sanctioning the plan on February 28, 2011.

2.3 James Gandy, Hary Gandy and Trent Garmoe

- 2.3.0 The Gandys and Garmoe were directors and officers of the Gandhi Group. Following the Filing Date and up until the approval of the sale of the Gandhi Group to Agfa, Hary and Garmoe continued to act as directors and officers of the Gandhi Group.
- 2.3.1 In January 2009, five months prior to the Filing Date, TA Associates, Inc. as general partner for TA Associates X, L.P., TA Atlantic and Pacific V, L.P., TA Strategic Partners Fund II, L.P., TA Strategic Partners Fund II-A, L.P., TA Investors II, L.P. and TA Subordinated Debt Fund II, L.P. ("TA Associates") commenced an arbitration proceeding against the Gandys and Garmoe. TA Associates was a debt and equity investor in the Gandhi Group. TA Associates are the largest creditors of the Gandhi Group and hold an accepted claim valued at CAD\$46,733,145. The value of TA Associates' claim against the Gandhi Group in effect would give TA Associates the ability to veto any plan.

- 2.3.2 Pursuant to the terms of the Claims Procedure Order, Hary and Garmoe filed claims (the “Employment Claims”) in respect of unpaid pre-filing and post-filing wages and bonuses, termination and severance pay in the total amount of \$1,667,972. Copies of these claims are attached hereto as **Appendices H and I**.
- 2.3.3 The Monitor issued Notices of Disallowance in respect of the Employment Claims. On December 20, 2010, Hary and Garmoe filed Notices of Dispute in respect of the disallowance of the Employment Claims. The Monitor expects to schedule a motion before this Honourable Court for the resolution of the Employment Claims. Copies of the Notices of Disallowance and Dispute are attached hereto as **Appendix J**. The timing of this motion will depend on whether this Honourable Court will permit the Indemnity Claims (as defined below) to be filed late.

2.4 Late Filed Claims

- 2.4.0 On December 9, 2010, one day prior to the Monitor’s motion for an order authorizing the Monitor to file a consolidated plan and call a meeting of creditors, the Monitor’s counsel was contacted by Mr. James DeCristofaro of the law firm Crosby & Higgins LLP, U.S. counsel for Garmoe and Gandys.
- 2.4.1 At that time Mr. DeCristofaro inquired of counsel for the Monitor as to why the proposed plan of compromise and arrangement did not contain a release of claims against the directors and officers of the Gandi Group. Counsel to the Monitor advised Mr. DeCristofaro that it had been advised by TA Associates, that it will not support a plan of compromise and arrangement that releases claims against the directors and officers of the Gandi Group.
- 2.4.2 Mr. DeCristofaro also advised the Monitor that TA Associates had reactivated its arbitration proceeding against Garmoe and the Gandys and, as a result, Garmoe and the Gandys intend to file new claims against the Gandi Group which claims allegedly arise pursuant to indemnity provisions in the Amended and Restated Limited Liability Company Agreement (the “LLC Agreement”) of Gandi Holdings with TA Associates, and others, including Superwide Limited

Partnership of which the Gandys and Garmoe are direct or indirect partners. In addition, Mr. DeCristofaro sought an adjournment of the December 10, 2010 motion to allow Garmoe and the Gandys to consider the effect of the consolidated plan of compromise and arrangement on his clients' claims.

- 2.4.3 On December 9, 2010, the Monitor agreed to adjourn the plan filing and meeting motion to January 4, 2011. Counsel for the Monitor also advised Mr. DeCristofaro that the Monitor will not consent to the late filing of the additional claims and that Mr. DeCristofaro's clients will have to bring a motion before this Court for leave to file these claims late.
- 2.4.4 On December 20, 2010, the Monitor received proofs of claim of Hary, James and Garmoe against the Gandi Group, each in the amount of CAD\$75,962,480 (the "Indemnity Claims"). Copies of these claims were attached to the Motion Record of Gandys and Garmoe as Exhibits H to J.
- 2.4.5 On December 21, 2010, Mr. Christopher J. Cosgriffe of the law firm of Woolgar VanWiechen Ketcheson Ducoffe LLP, Canadian counsel to the Gandys and Garmoe advised the Monitor that his clients will not be taking any position on the plan filing and meeting motion and will not be filing any materials in respect of that motion.
- 2.4.6 On January 5, 2011, the Monitor formally advised the Gandys and Garmoe that it will not consent to the late filing of the Indemnity Claims and advised them that they may bring a motion before this Court for an order authorizing late filing of these claims. In light of the size of the Indemnity Claims and their impact on the distributions to creditors, the Monitor advised the Gandys and Garmoe that such motion should be brought on notice to the Service List.

3 MONITOR'S REASONS FOR WITHHOLDING CONSENT TO LATE FILING

- 3.1 For the reasons set out below, the Monitor withheld its consent and objects to the late filing of the Indemnity Claims. In particular, for the reasons set out below, the Indemnity Claims, if permitted to be filed, will significantly prejudice existing creditors of the Gandi Group by substantially delaying

in the Gandy CCAA proceeding and increasing the costs of administering the estate of the Gandy Group.

3.2 The Monitor has not conducted a merits review of the Indemnity Claims. The information which forms the basis of the Monitor's recommendations below is derived from the Indemnity Claims filed, the Affidavit of Hary Gandy sworn February 2, 2011 and the Monitor's participation in this CCAA Proceeding.

3.3 The Claims Bar Date and Late Filing

3.3.0 The Monitor uniformly required late filing claimants to file a motion for an extension of time to file a claim which the Monitor did not oppose provided there was a satisfactory explanation of why the claim was not filed on a timely basis. Certain creditors elected not to bring such motions and allowed their claims to be extinguished pursuant to the terms of the Claims Procedure Order. In one case, a late filing creditor brought a motion and obtained an order allowing it to file its claim late by reason of inadvertence and well before the consolidated plan was proposed.

3.3.1 Based on the facts set out in the Affidavit of Hary Gandy sworn February 2, 2011 (the "Gandy Affidavit") in support of this motion, it is evident that the Gandys and Garmoe were aware of the existence of the contingent Indemnity Claims under the LLC Agreement prior to the Filing Date and the majority of the allegations asserted by TA Associates relate to alleged misconduct of the Gandys and Garmoe prior to the Filing Date.

3.3.2 The Gandys and Garmoe were aware of the call for claims against the Gandy Group and in response to the call for claims, filed the Employment Claims. It was open to these parties at that time, to file their contingent indemnity claims and commence discussions with the Monitor to value those claims.

3.3.3 Furthermore, based on the information set out in the Gandy Affidavit it is apparent that the Gandys and Garmoe were aware, as early as August 2010, that TA Associates was continuing to proceed with the arbitration proceedings. However, they chose not to seek an extension of time to file

the Indemnity Claims until such time as the plan of compromise and arrangement was prepared and served.

3.3.4 Discovery in the arbitration proceeding was temporarily delayed by TA Associates at the request of the Monitor as it was felt desirable to permit senior management of the Gandi Group to attend to the restructuring.

3.4 Effect to the Gandi Group's Estate if the Indemnity Claims are Allowed to be Filed

Dilution of the Current Distribution Pool

3.4.0 As discussed above, based on the information available to it at that time, the Monitor prepared a consolidated plan of compromise and arrangement, which estimated a distribution to unsecured creditors of approximately 26.8¢ on the dollar.

3.4.1 The entire Distribution Pool of the Gandi Group is estimated at approximately \$20.6 million and the Indemnity Claims, if allowed to be filed, under the consolidated plan, would reduce the distribution to other creditors of the Gandi Group by approximately 50% to 13.5¢ on the dollar.

The Effect of Allowing the Indemnity Claims

3.4.2 The Indemnity Claims are contingent claims and the total potential value of the Indemnity Claims will depend on:

(i) the outcome of the arbitration proceeding; and

(ii) If TA Associates are successful, payment by the Gandys and Garmoe of all or part of the amount awarded to TA Associates.

3.4.3 In addition, any award in favour of TA Associates will have to take into account any distribution made to TA Associates in this CCAA Proceeding. In any event, the value of the Indemnity Claims is limited to the amount actually paid by the Gandys and Garmoe in favour of TA Associates, which amount may not be determined for years.

3.4.4 Furthermore, in addition to the quantification of the Indemnity Claims in the arbitration process, if this Honourable Court allows for late filing of the Indemnity Claims, the Monitor anticipates bringing a motion before this Court to determine whether the indemnity provisions in the LLC Agreement apply to the claims asserted by TA Associates, at considerable expense to the estate, which will necessarily be borne by the current accepted creditors of the Gandhi Group.

Requirement to Revise the Plan

3.4.5 On the face of the LLC Agreement, the Indemnity Claims of the Gandys and Garmoe are limited to claims against Gandhi Holdings. If this Honourable Court allows the late filing of the Indemnity Claims, the Monitor anticipates that it will bring a motion before this Court to determine the proper indemnifier under the LLC Agreement.

3.4.6 If this Honourable Court extends the time for filing of the Indemnity Claims and subsequently determines that the Indemnity Claims are limited to claims against Gandhi Holdings, the consolidated plan may no longer be appropriate or equitable.

3.4.7 The estimated net proceeds generated from the sale of the assets of Gandhi Holdings (i.e. shares of the foreign subsidiaries of the Gandhi Group) are estimated by the Monitor to be approximately CAD\$3.7 million (out of the total estimated Purchase Price of USD\$40.4 million). TA Associates (who have a joint and several claim against the Gandhi Group), the Gandys and Garmoe are essentially the only creditors who asserted claims against Gandhi Holdings.

3.4.8 The Monitor has prepared at Appendix K an analysis of a consolidated plan which excludes Gandhi Holdings. Under such plan, creditors asserting claims against the Gandhi Group, other than Gandhi Holdings, would receive distributions on *pro rata* basis in the approximate amount of 22.0¢ on the dollar (as opposed to 13.5¢ on a consolidated basis). In addition, TA Associates, the Gandys and Garmoe would get a *pro rata* share of CAD\$3.7 million (allocated purchase price for Gandhi Holdings).

3.4.9 In the event the Indemnity Claims are allowed to be filed late and are determined to be limited to Gandhi Holdings, the Monitor believes it would be equitable that a separate plan be developed for the creditors of Gandhi Holdings in order to minimize prejudice to the creditors of the other Gandhi Group entities. A summary of the expected distributions under the consolidated plan versus a plan which carves out Gandhi Holdings is set out in the following table:

Method	TA Associates	James, Hary, Garmoe	All Other Creditors
Consolidated Method - Gandhi Canada, Gandhi San Antonio & Gandhi Holdings excluding Indemnity Claims ¹ (Appendix K)	26.8¢	0.0¢	26.8¢
Consolidated Method - Gandhi Canada, Gandhi San Antonio & Gandhi Holdings, considering Indemnity Claims (Appendix L)	13.5¢	13.5¢	13.5¢
Consolidated Method for Limited & LLC available to all creditors except the Indemnity Claims Gandhi Holdings sale proceeds available only to TA Associates & the Indemnity Claims (Appendix L)	25.0¢	3.0¢	22.0¢

¹ This method assumes the Monitor's disallowance of Employment Claims is upheld.

Prejudice to Creditors and the Estate

- 3.4.10 The filing of the Indemnity Claims will in effect derail the CCAA process of the Gandhi Group.
- 3.4.11 The meeting of creditors of the Gandhi Group is scheduled for February 22, 2011 and the Sanction Hearing is scheduled for February 28, 2011. As described in detail in the Monitor's Twelfth Report, based on the claims submitted in the Claims Process, the Monitor evaluated the distribution to creditors on both a consolidated and corporate entity method and concluded that the consolidated method was most equitable. This recommendation was approved by this Court and the U.S. Court as evidenced by the Amended Plan Filing and Meeting Order and the U.S. Plan Filing and Meeting Recognition Order.
- 3.4.12 If this Honourable Court permits the Indemnity Claims to be filed late, the Monitor will be required to adjourn the meeting of creditors in order to consider the effect of the Indemnity Claims on the other creditors and the appropriateness of the consolidated plan in light of these late filed claims.
- 3.4.13 If it is determined that a separate plan for Gandhi Holdings is appropriate and equitable, the Monitor will have to bring a motion before this Court and the U.S. Court to approve the filing of an amended consolidated plan and a separate Gandhi Holdings plan and incur the expense of redistributing materials to the creditors of the Gandhi Group.
- 3.4.14 If the Indemnity Claims are permitted to be filed late, and in the absence of a carve-out of Gandhi Holdings from the consolidated plan, distributions to unsecured creditors will be delayed until the arbitration proceeding is finally resolved and payment in respect of any award is made by the Gandys and Garmoe, which may take several years.

4 SUMMARY AND RECOMMENDATIONS

- 4.1 The Monitor respectfully requests the Court deny the request for an order extending the time to file the Indemnity Claims.

All of which is respectfully submitted this 14th day of February, 2011.

BDO CANADA LIMITED
Monitor in the CCAA proceeding of
Gandi Innovations Limited,
Gandi Innovations Holdings LLC,
Gandi Innovations LLC,
Gandi Innovations Hold Co., and
Gandi Special Holdings LLC
Per:

A handwritten signature in black ink, appearing to read 'BF Davidson', written over a horizontal line.

Blair F. Davidson, CA•CIRP, CBV, CMC
President