

**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**

**SEVENTEENTH REPORT OF THE MONITOR**

**March 29, 2012**

<b>Appendix A</b>	<b>The Twelfth Report without Appendices</b>
<b>Appendix B</b>	<b>Endorsement of Justice Newbould dated August 25, 2011</b>
<b>Appendix C</b>	<b>Order of Justice Newbould dated August 25, 2011</b>
<b>Appendix D</b>	<b>Endorsement of the Ontario Court of Appeal dated January 3, 2012</b>

## **1. PURPOSE**

1.1 The purpose of this Seventeenth report of the Monitor is to request an extension of the stay of proceedings as follows:

- to provide the Court with information regarding the activities of the Monitor since the filing of the sixteenth reports; and
- to request an extension of the Stay of Proceedings until May 1, 2012.

## **2. INTRODUCTION AND BACKGROUND**

### **2.1 Background**

2.1.1 Gandhi Innovations Limited (“Gandhi Canada”), Gandhi Innovations Holdings LLC, (“Gandhi Holdings”) and Gandhi Innovations LLC (“Gandhi San Antonio”, and together with Gandhi Canada and Gandhi Holdings, “Gandhi”) obtained protection from their creditors under the Companies’ Creditors Arrangement Act (“CCAA”) pursuant to an Order (the “Initial Order”) of this Honourable Court, as amended, dated May 8, 2009.

2.1.2 The Initial Order appointed BDO Canada Limited (previously BDO Dunwoody Limited) as the Monitor of the Gandhi Group (the “Monitor”).

2.1.3 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.

2.1.4 On June 5, 2009, the Gandhi Group 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 of the United States Bankruptcy Code.

2.1.5 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”).

- 2.1.6 On January 15, 2010, the Monitor closed the sale of substantially all of the business and assets of the Gandi Group to Agfa.
- 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 Gandi Group, a plan of compromise or arrangement under the CCAA (the "Expanded Powers Order").
- 2.1.8 On March 9, 2010, this Honourable Court also issued an order (the "Claims Procedure Order") authorizing the Monitor to conduct a process for calling and determining claims of the Gandi Group's creditors (the "Claims Process"). Among other things, the Claims Procedure Order established June 30, 2010 as the Claims Bar Date.
- 2.1.9 On March 31, 2010, the U.S. Court granted an order recognizing, among other things, the Claims Procedure Order and the Expanded Powers Order.
- 2.1.10 The Claims Process was substantially completed by October 2010.

## **2.2 Plan of Compromise and Arrangement**

- 2.2.1 For reasons set out in the Monitor's Twelfth Report to the Court and based on the information available to the Monitor at the time, including the claims received in the Claims Process, the Monitor determined that a consolidated plan of compromise and arrangement represented the most equitable distribution for the unsecured creditors of the Gandi Group and proceeded to prepare such a plan. A copy of the Twelfth Report, without appendices, is attached as Appendix A.
- 2.2.2 On January 4, 2011, this Court granted an order authorizing the Monitor to file a consolidated plan of compromise and arrangement and call a meeting of creditors of the Gandi Group.

## **2.3 Late Filed Indemnity Claims**

- 2.3.1 In January 2009, 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”), a shareholder and the largest unsecured creditor of the Gandhi Group, commenced an arbitration proceeding against former directors and officers of Gandhi Holdings. In the arbitration TA Associates claim damages against these parties in an amount in excess of \$75 million USD, primarily composed of TA Associates’ equity investment in Gandhi Holdings (in the amount of \$50 million USD) and their unsecured loan to Gandhi Holdings (in the principal amount of \$25 million USD), guaranteed by the other members of the Gandhi Group.

2.3.2 The motion to file a consolidated plan of compromise and arrangement was originally returnable on December 10, 2010. On December 9, 2010, the Monitor received notice from former directors and officers of Gandhi Holdings, Hary Gandy (“Hary”), James Gandy (“James”) and Trent Garmoe (“Garmoe”, and together with Hary and James, the “D&O Claimants”) that they intend to file their Indemnity Claims (as defined below).

2.3.3 On December 20, 2010, the Monitor received proofs of claim of Hary and James against the Gandhi Group in the approximate amount of \$76 million and a proof of claim of Garmoe against the Gandhi Group in an approximate amount of \$88 million (collectively, the “Indemnity Claims”). The D&O Claimants asserted an entitlement to indemnification by each member of the Gandhi Group in respect of any award which may be made against them in the arbitration together with all legal fees incurred by the D&O Claimants in defending the arbitration.

2.3.4 On February 18, 2011, Justice Morawetz granted leave to the D&O Claimants to file their Indemnity Claims late despite the passage of the claims bar date.

2.3.5 The Monitor, with the assistance of its counsel, reviewed the Indemnity Claims and disallowed them in full. The D&O Claimants disputed the disallowances.

## **2.4 Motion to Determine Preliminary Issues with the Indemnity Claims**

2.4.1 On August 18, 2011, the Monitor brought a motion to determine the following threshold issues with respect to the Indemnity Claim:

- a) a determination as to which Gandhi Group entities granted indemnities in favour of the D&O Claimants; and
- b) a determination of whether a substantial portion of the Indemnity Claims constitutes equity claims, which rank behind claims of unsecured creditors.

2.4.2 On August 25, 2011, Justice Newbould issued an endorsement which determined that: (i) the D&O Claimants are not entitled to any indemnification from Gandhi Canada, Gandhi Special and Gandhi San Antonio; and (ii) a significant portion of the D&O Claimants' claim for indemnity in the amount of \$50 million is an equity claim subordinated to claims of the unsecured creditors. Copies of Justice Newbould's endorsement and the issued order are attached as Appendix B and C.

2.4.3 On September 9, 2011, the Claimants served a Notice of Motion for leave to appeal Justice Newbould's ruling and order.

2.4.4 On January 3, 2012, the Court of Appeal dismissed the motion for leave to appeal Justice Newbould's order. A copy of the Court of Appeal's Endorsement is attached as Appendix D.

## **2.5 New Plan(s) of Compromise and Arrangement**

2.5.1 Due to the quantum of the Indemnity Claims and the D&O Claimants claims of entitlement to indemnity from all members of the Gandhi Group, the Monitor did not proceed with the previously filed consolidated plan of compromise and arrangement until the preliminary issues with the Indemnity Claims were resolved.

2.5.2 Based on Justice Newbould's decision, the Indemnity Claims, if any, are limited to claims against Gandhi Holdings (which can be asserted by each of the D&O Claimants) and claims against Gandhi Hold Co (which can only be asserted by James).

2.5.3 The Monitor has determined that the consolidated plan of compromise and arrangement that includes all members of the Gandhi Group, previously filed

with the Court, no longer represents the most equitable distribution for the unsecured creditors of the Gandhi Group.

2.5.4 The Monitor is working with its legal counsel to prepare a new plan or plans of compromise and arrangement for the Gandhi Group in order to distribute the proceeds from the sale of the Gandhi Group's business and assets to Agfa. The Monitor expects to return to Court in April 2012 on a motion for an order authorizing the Monitor to file the new plan or plans.

### **3. STAY EXTENSION**

3.1.1 The restructuring proceeding of the Gandhi Group is essentially complete. The Monitor holds proceeds from the sale of the Gandhi Group's business and assets to Agfa in trust for eventual distribution to unsecured creditors pursuant to a plan(s) of compromise and arrangement upon the resolution of the D&O Claimants' claims for indemnification by the Gandhi Group.

3.1.2 The current stay period expires on March 31, 2012. The Monitor is working diligently and in good faith to complete a plan of compromise and arrangement for Gandhi Canada, Gandhi San Antonio and Gandhi Special in order to affect a distribution to unsecured creditors of these entities. The Monitor anticipates that it will be in a position to finalize and file a consolidated plan by end of April 2012. An extension of the Stay of Proceedings is necessary in order to prepare a plan of compromise and arrangement for Gandhi Canada, Gandhi San Antonio and Gandhi Special and bring a motion before the Court for an order authorizing the Monitor to file such a plan.

3.1.3 As a result of the foregoing, the Monitor seeks an extension of the stay of proceedings to May 1, 2012.

### **4. SUMMARY AND RECOMMENDATIONS**

4.1.1 The Monitor respectfully requests the Court approve the Monitor's request for and an order granting an extension of the Stay Period to May 1, 2012.

All of which is respectfully submitted this 21<sup>st</sup> day of March, 2012.

**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:



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