

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

TWENTIETH REPORT OF THE MONITOR

June 14, 2012

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## 1. PURPOSE

1.1 The purpose of this Twentieth Report of the Monitor is to provide this Court with information in respect of:

- the activities of the Monitor since the filing of the Seventeenth Report;
- the request for an order approving the proposed allocation of the proceeds from the Sale Transaction (as defined below) and cash held in the Monitor's trust account among the Gandhi Group (as defined below) as described in Appendix L to this Report;
- the request for an order approving the filing of a consolidated Plan of Compromise and Arrangement (the "Plan") on behalf of Gandhi Innovations Limited ("Gandhi Canada") and Gandhi Innovations LLC ("Gandhi San Antonio") and authorizing the Monitor to call a meeting of creditors of Gandhi Canada and Gandhi San Antonio to consider and vote on the Plan (the "Plan Filing and Meeting Order");
- the request for an order approving the fees of the Monitor and its legal counsel; and
- the request for an extension of the stay of proceedings to September 30, 2012.

## 2. INTRODUCTION AND BACKGROUND

### 2.1 Gandhi Group Background

2.1.1 The Gandhi group of companies, including Gandhi Canada and Gandhi San Antonio, was a manufacturer and distributor of high performance digital and grand format printers and included numerous related companies around the world. The group was headquartered in Mississauga, Ontario. A copy of the corporate organizational chart of the Gandhi group of companies is attached hereto as Appendix A.

2.1.2 The Gandhi group of companies include the following: Gandhi Canada, Gandhi San Antonio, Gandhi Innovations Holdings LLC, ("Gandhi Holdings"), Gandhi Innovations Hold Co. ("Gandhi Holdco"), Gandhi Special Holdings LLC ("Gandhi Special"),

Gandi Innovations FZCO (“**Gandi Dubai**”), Gandi Innovations BVBA (“**Gandi Belgium**”) and Gandi Innovations S.A. de C.V. (“**Gandi Mexico**”).

2.1.3 All of the printers manufactured and sold by the Gandi entities were manufactured in Canada at the Mississauga premises. The remaining operating Gandi entities world-wide acted as sales and distribution entities for the products of Gandi Canada and were entirely dependent upon Gandi Canada for their production requirements.

2.1.4 Gandi Holdings was incorporated pursuant to the laws of the State of Delaware on August 24, 2007. On or about September 12, 2007, the Gandi group of companies world-wide re-organized their business structure so that Gandi Holdings became the parent of the Gandi entities. Gandi Holdings had no active business. Following the re-organization, Gandi Canada remained the manufacturing entity and the world-wide headquarters of the Gandi group of companies.

## 2.2 Gandi Group CCAA Proceeding

2.2.1 Gandi Canada, Gandi San Antonio and Gandi Holdings (collectively, “**Gandi**”) obtained protection from their creditors under the Companies’ Creditors Arrangement Act (“**CCAA**”) pursuant to an Order (the “**Initial Order**”) of this Court dated May 8, 2009.

2.2.2 The Initial Order appointed BDO Canada Limited (previously BDO Dunwoody Limited) as the Monitor of Gandi (the “**Monitor**”).

2.2.3 On June 5, 2009, Gandi 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 (the “**Chapter 15 Proceeding**”).

## 2.3 Sale to Agfa

2.3.1 On November 25, 2009, this Court approved the sale of substantially all of the business and assets of Gandi (the “**Sale Transaction**”) to Agfa Corporation and

Agfa Inc. (collectively referred to as “Agfa”). Included in the assets purchased by Agfa were:

- a) the business and substantially all assets of Gandhi Canada and Gandhi San Antonio, excluding intercompany receivables;
- b) the shares of Gandhi Dubai, Gandhi Belgium and Gandhi Mexico (collectively, the “Foreign Subsidiaries”) owned by their majority shareholder Gandhi Holdings and Gandhi Special (which owned 1 share of each of the Foreign Subsidiaries); and
- c) accounts receivable and inventory of small branch operations in South Africa, the Middle East (other than Dubai), and India which were owned by Gandhi Holdco, a wholly owned subsidiary of Gandhi Canada.

2.3.2 On November 25, 2009, to facilitate the Sale Transaction, this Court also added Gandhi Holdco and Gandhi Special (and together with Gandhi and Gandhi Holdco, the “Gandhi Group”) as debtors to the Gandhi CCAA Proceeding.

2.3.3 On January 15, 2010, the Monitor closed the Sale Transaction.

2.3.4 The total final purchase price received by the Monitor from the sale to Agfa was approximately \$40.3 million USD (the “Purchase Price”) and was comprised of both a contingent and a non-contingent portion. Sale proceeds totaling \$25 million USD were received by the Monitor on closing with the balance of the Purchase Price contingent on collection of accounts receivable payable over a period of two years. The Monitor has now received all of the Purchase Price.

2.3.5 On January 28, 2010, this Court approved payment of the claims of the secured creditors of the Gandhi Group in satisfaction of their claims totaling approximately \$29 million. With the exception of one small PMSI claim accepted in the Claims Process (as defined below), all other secured creditors of the Gandhi Group have been paid out in full.

2.3.6 A statement of Receipts and Disbursements is attached hereto as **Appendix B**. The Monitor currently holds \$20,456,000 USD and \$472,883 CDN of estate funds

in its trust accounts which are available for distribution to unsecured creditors holding proven claims.

2.3.7 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 (the "Expanded Powers Order"). A copy of the Expanded Powers Order is attached as Appendix C.

## 2.4 Claims Procedure

2.4.1 On March 9, 2010, this 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.

2.4.2 On March 31, 2010, the U.S. Court granted an order recognizing, among other things, the Claims Procedure Order and the Expanded Powers Order.

2.4.3 The Claims Process was substantially completed by October, 2010. A summary of the claims received by the Monitor in the Claims Process is set out in section 3.12 of this Report.

## 2.5 Original Plan of Compromise and Arrangement

2.5.1 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 of the Gandi Group represented the most equitable distribution for the unsecured creditors of the Gandi Group and proceeded to prepare such a plan (the "Original Plan"). A copy of the Twelfth Report without appendices is attached as Appendix D.

2.5.2 The Original Plan provided for the *pro rata* distribution of the available funds to the unsecured creditors of the Gandi Group holding proven claims.

- 2.5.3 The motion to approve the Original Plan was originally returnable December 10, 2010. On December 9, 2010, the Monitor received notice from lawyers for Hary Gandy (“Hary”), James Gandy (“James”) and Trent Garmoe (“Garmoe”, and together with Hary and James, the “D&O Claimants“), former directors and/or officers of Gandi Holdings, that the D&O Claimants would seek leave of the Court to file their Indemnity Claims (as defined and discussed in greater detail below) against the Gandi Group.
- 2.5.4 On January 4, 2011, this Court granted an order authorizing the Monitor to file the Original Plan and call a meeting of creditors of the Gandi Group to consider and vote on the Original Plan (the “Original Plan Filing Order”). A copy of the January 4 Order is attached as **Appendix E**.
- 2.5.5 The Original Plan Filing Order, among other things, provided that the Monitor was to hold a meeting of creditors for the purpose of voting on the Original Plan. Pursuant to the Original Plan Filing Order, the Monitor sent out a notice of creditors’ meeting to the Gandi Group’s creditors.
- 2.5.6 On January 26, 2011, the U.S. Court recognized the Original Plan Filing Order.
- 2.5.7 On February 18, 2011, Justice Morawetz granted leave to the D&O Claimants to file their Indemnity Claims late. A copy of Justice Morawetz’s Endorsement is attached hereto as **Appendix F**. In his Endorsement, Justice Morawetz noted that the Monitor can apply to Court to have certain preliminary issues in connection with the Indemnity Claims determined.
- 2.5.8 On February 22, 2011, the creditors’ meeting was held pursuant to the terms of the Original Plan Filing Order. At the creditors’ meeting, the Monitor reported to the attending creditors on the Indemnity Claims and sought a vote on the Original Plan in the event such plan remained appropriate following a review and resolution of the Indemnity Claims. The creditors voting in person or by voting letter at the creditors’ meeting unanimously approved the Original Plan. TA Associates (as defined below) did not vote on the Original Plan.
- 2.5.9 In light of the size of the Indemnity Claims (which is equivalent to the value of the Gandi Group’s remaining unsecured creditor pool) and the D&O Claimants’

assertion that all of members of the Gandhi Group were liable for the Indemnity Claims, the Monitor did not seek to sanction the Original Plan or made any distributions thereunder until certain threshold issues (including the issue of whether the D&O Claimants are entitled to indemnity by any Gandhi entity other than Gandhi Holdings and Gandhi Holdco) were resolved.

## 2.6 Indemnity Claims

- 2.6.1 As referenced above, in September 2007, the Gandhi group of companies re-organized their business structure so that Gandhi Holdings became the parent of the various entities comprising the Gandhi group of companies world-wide. In connection with the re-organization, 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”), an equity fund based in Boston, Massachusetts, advanced \$75 million USD by way of debt and equity to the Gandhi Group.
- 2.6.2 TA Associates’ investment in the Gandhi Group consisted of an equity investment in the amount of \$50 million USD in Gandhi Holdings and an unsecured loan in the amount of \$25 million USD to Gandhi Canada which amount was guaranteed by other members of the Gandhi Group. TA Associates remains the largest unsecured creditor of the Gandhi Group.
- 2.6.3 In January 2009, TA Associates, commenced an arbitration proceeding against the D&O Claimants. In the arbitration TA Associates claim damages against the D&O Claimants for an amount in excess of approximately \$75 million USD, plus statutory interest, including the total amount of TA Associates’ investment in the Gandhi Group (the “Arbitration”).
- 2.6.4 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 the approximate amount of \$88 million (collectively, the “Indemnity Claims”). The D&O Claimants asserted an entitlement to indemnification by the Gandhi Group in respect of any award of



damages which may be made against them in the arbitration together with all legal fees incurred by the D&O Claimants in defending the arbitration.

2.6.5 As referenced above, on February 18, 2011, Justice Morawetz granted leave to the D&O Claimants to file their Indemnity Claims despite the passage of the Claims Bar Date.

2.6.6 On March 11, 2011, the Monitor disallowed the Indemnity Claims. The disallowance was disputed by the D&O Claimants. On August 18, 2011, the Monitor brought a motion before Justice Newbould to determine the following threshold issues with respect to the Indemnity Claims:

- a) a determination as to which Gandi 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.

2.6.7 On August 25, 2011, Justice Newbould released an endorsement which determined that: (i) the D&O Claimants are not entitled to any indemnification from Gandi Canada, Gandi Special and Gandi 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 ranking subordinate to the claims of unsecured creditors. Copies of Justice Newbould's endorsement and order are attached as **Appendices G and H**.

2.6.8 In addition, Justice Newbould subsequently issued a cost award against the D&O Claimants in favour of the Monitor and TA Associates. A copy of Justice Newbould's Endorsement on costs is attached hereto as **Appendix I**. To date, no costs have been paid by the D&O Claimants to the Monitor or TA Associates.

2.6.9 On September 9, 2011, the D&O Claimants sought leave to appeal Justice Newbould's order. On January 3, 2012, the Court of Appeal dismissed the motion for leave to appeal. A copy of the Court of Appeal's Endorsement is attached as hereto **Appendix J**.

2.6.10 The Arbitration was heard during the summer and fall of 2011. Prior to rendering the decision on the Arbitration, the arbitrator who heard the Arbitration passed away. The Monitor is advised by TA Associates that a new arbitrator has been appointed and that a new hearing may be required.

2.6.11 In accordance with Justice Newbould's decision, the Indemnity Claims, if any, can only be asserted against Gandhi Holdings<sup>1</sup> and Gandhi Holdco<sup>2</sup>.

2.6.12 The Indemnity Claims are contingent upon the resolution of the Arbitration. The Monitor is not in the position to finally determine the value of the Indemnity Claims until the Arbitration is completed and a decision is released. This impairs the Monitor's ability to make a meaningful distribution to creditors of Gandhi Holdings and Gandhi Holdco (namely, TA Associates and the D&O Claimants) without providing for a holdback for the contingent the Indemnity Claims.

2.6.13 With the benefit of the Court's directions concerning the Indemnity Claims, the Monitor is now in the position to distribute the proceeds from the Sale Transaction and the cash on hand to creditors of the remaining Gandhi Group entities: Gandhi Canada and Gandhi San Antonio<sup>3</sup>. Any distribution is subject to this Court's approval of the proposed allocation of the available funds between the Gandhi Group entities.

### 3. ALLOCATION METHOD

#### 3.1 Summary of Claims and Disputed Claims

3.1.1 A fulsome discussion of the results of the Claims Process is set out in the Monitor's Eleventh Report dated September 2, 2010. A copy of the Eleventh Report without appendices is attached as **Appendix K**.

3.1.2 The chart below summarizes the number and value of the claims received by the Monitor, including the Indemnity Claims. As is evidenced by the summary

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<sup>1</sup> Which can be asserted by each of the D&O Claimants.

<sup>2</sup> Which can only be asserted by James.

<sup>3</sup> There are no accepted claims against Gandhi Special. Furthermore, as demonstrated below, Gandhi Special has no assets available for distribution.

chart, with the exception of the claims of TA Associates for recovery of their unsecured loan in Gandhi Holdings (which was guaranteed by the other members of the Gandhi Group) and the Indemnity Claims, all other Gandhi Group's creditors' claims were solely against Gandhi San Antonio and/or Gandhi Canada.

<b>Summary of Claims Filed and Accepted by Entity</b>					
	<b>Gandhi Canada</b>	<b>Gandhi Holdco</b>	<b>Gandhi San Antonio</b>	<b>Gandhi Holdings</b>	<b>Total</b>
<b>Claims (#):</b>					
Filed	133	2	73	4	212
Accepted	132	-	70	-	202
<b>Claims under review</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>10</b>
<b>Claims accepted (\$):</b>					
(1) Trade Creditors	12,944,255	-	16,696,996	-	29,641,251
(2) TA Associates *	40,304,002	40,304,002	40,304,002	40,304,002	40,304,002
<b>Total claims accepted</b>	<b>\$ 53,248,257</b>	<b>\$ 40,304,002</b>	<b>\$ 57,000,998</b>	<b>\$ 40,304,002</b>	<b>\$ 69,945,253</b>
<b>Disputed claims (\$):</b>					
(1) Employment Claims**	-	-	1,677,971	-	1,677,971
(2) Indemnity Claims	-	25,000,000***	-	25,000,000	25,000,000
<b>Total disputed claims</b>	<b>\$ -</b>	<b>\$ 25,000,000</b>	<b>\$ 1,677,971</b>	<b>\$ 25,000,000</b>	<b>\$ 26,677,971</b>

\* In calculating the total dollar value of the claims, TA Associates' claim is included in the total valid claim amount as \$40,304,002 and not a multiple of this amount.

\*\* The Employment Claims represent claims filed by Hary and Garmoe in respect of unpaid pre-filing and post-filing wages and bonuses, termination and severance pay. The Employment Claims have been disallowed in full by the Monitor and the resolution of these claims was suspended until the issues concerning the Indemnity Claims were resolved. The Monitor will attend before this Court on a 9:30 appointment to schedule a motion for advice and directions with respect to the Employment Claims.

\*\*\* In accordance with Justice Newbould's order, James, as the sole director and officer of Gandhi Holdco, is the only D&O Claimants who may assert indemnity claims against Gandhi Holdco.

3.1.3 As evidenced by the summary chart, the majority of the claims filed were filed against Gandhi Canada and Gandhi San Antonio. TA Associates and the D&O Claimants are the only unsecured creditors of Gandhi Holdings and Gandhi Holdco.

### 3.2 Consolidated Plan of Gandhi Canada and Gandhi San Antonio

3.2.1 In light of: (i) Justice Newbould's decision that the Indemnity Claims can be asserted against Gandhi Holdings and Gandhi Holdco; (ii) the number and quantum of the claims filed in the Claims Process and the fact that the only

claims filed against Gandhi Holdings and Gandhi Holdco were claims of TA Associates and the D&O Claimants; and (iii) the nominal value of the assets of Gandhi Holdings and Gandhi Holdco sold to Agfa, the Monitor has determined that the Original Plan no longer represents the most equitable distribution of funds to creditors of Gandhi Canada and Gandhi San Antonio. As a result of the Indemnity Claims, the current effect of the Original Plan on the amounts of funds available for distribution to unsecured creditors is that it would unfairly benefit the D&O Claimants (if their claims were found to be valid) at the expense of all other unsecured creditors of the Gandhi Group.

3.2.2 In order to proceed with the Plan, the Monitor needs to confirm the amount available for distribution to creditors of Gandhi Canada and Gandhi San Antonio and seeks the Court’s approval of the Monitor’s proposed allocation. For the reasons discussed in the next section of this Report, it is the Monitor’s position that the most equitable allocation method is one that takes into account intercompany balances between the Gandhi Group entities.

**3.3 Purchase Price Allocation Considerations and Methodology**

3.3.1 The sale agreement between the Gandhi Group and Agfa provided for a purchase price allocation among the Gandhi Group entities based on the gross book value of receivables and inventory. Those gross amounts were:

<b>Gross Book Value of Receivables and Inventory</b>	
Gandhi Canada	\$ 34,488,000
Gandhi Holdco	1,786,000
Gandhi San Antonio	3,532,000
Gandhi Holdings#	13,764,000
<b>Total Gross Book Values</b>	<b>53,570,000</b>

\* - represents the receivables and inventory of the Foreign Subsidiaries

3.3.2 The Monitor is of the view that this formula is not appropriate for distribution purposes as the formula was tax driven and did not take into consideration the intercompany balances owed by various Gandhi entities to Gandhi Canada.

3.3.3 The following table summarizes the intercompany balances at the closing date, set out in detail Appendix L to this Report. The table demonstrates that Gandhi

Canada was owed \$43.2 million in total from Gandhi Holdco, Gandhi San Antonio and Gandhi Holdings.

<b>Analysis of Intercompany Balances (to)/from</b>					
	Gandi Canada	Gandi Holdco	Gandi San Antonio	Gandi Holdings	Total
Gandi Canada	-	334,000	22,115,000	20,769,000	43,218,000
Gandi Holdco	(334,000)	-	(860,000)	(2,970,000)	(4,164,000)
Gandi San Antonio	(22,115,000)	860,000	-	17,865,000	(3,390,000)
Gandi Holdings	(20,769,000)	2,970,000	(17,865,000)	-	(35,664,000)
<b>Totals</b>	<b>(43,218,000)</b>	<b>4,164,000</b>	<b>3,390,000</b>	<b>35,664,000</b>	<b>-</b>
	Net receivable due to Canada	Net liability owing by Holdco	Net liability owing by San Antonio	Net liability owing by Holdings	

3.3.4 Appendix L to this Report demonstrates the impact of intercompany balances on the purchased assets of each entity within the Gandhi Group. The following table is a summary of this impact.

<b>Gandi Entity</b>	<b>Excluding Intercompany Balances in Calculating Purchased Assets</b>	<b>Including Intercompany Balances in Calculating Purchased Assets</b>
Gandi Canada	64.5%	99.8%
Gandi Holdco*	3.3%	0.0%
Gandi San Antonio	6.6%	0.2%
Gandi Holdings* ^	25.6%	0.0%
<b>Total</b>	<b>100.0%</b>	<b>100.0%</b>

\* The intercompany liabilities exceed the value of the purchased assets of these entities, resulting in a net asset balance of nil.

^ This entity is the parent company of the Foreign Subsidiaries.

3.3.5 The allocation of the purchase price to Gandhi Holdings is based on the value of the shares of the Foreign Subsidiaries which were the only assets of Gandhi Holdings that were included in the purchased assets. In determining the purchase price for the shares of the Foreign Subsidiaries, Agfa took into account the assets and liabilities of these entities, but excluded the intercompany liabilities. The intercompany liabilities of the Foreign Subsidiaries as at the closing date exceeded the value of the assets of the Foreign Subsidiaries. Accordingly, as demonstrated in Appendix L and the summary table above, failure to take into account the value of Foreign Subsidiaries intercompany

liabilities would inflate the purchase price of Gandhi Holdings, a holding company with no assets other than the shares of various Gandhi entities.

3.3.6 It is the Monitor's position that an allocation of the Purchase Price and other estate funds among the Gandhi Group entities that takes into account intercompany liabilities results in the most equitable distribution to the creditors and recommends that the Court approve this method of allocation.

### 3.4 Distribution Calculation Methods

3.4.1 As presented in the Monitor's Statement of Receipts and Disbursements attached hereto as Appendix B, \$19.9 million of funds held in trust by the Monitor is available for distribution to creditors of the Gandhi Group. Of this amount, approximately \$19.6 million is currently available for distribution to creditors of Gandhi Canada and Gandhi San Antonio (the "Distribution Pool"). The balance of approximately \$300,000 is available for the creditors of Gandhi Holdco. As demonstrated in Appendix L, the Monitor has determined that no value should be allocated to the shares of the Foreign Subsidiaries<sup>4</sup>. Since the shares of these companies constituted Gandhi Holdings only purchased assets, it is the Monitor's position that no amount of funds should be allocated to Gandhi Holdings.

3.4.2 The Monitor also seeks this Court's approval to distribute the estate funds of Gandhi Canada and Gandhi San Antonio on the Consolidated Method, rather than the Corporate Entity Method (each as described below) to creditors of Gandhi Canada and Gandhi San Antonio.

(i) The Consolidated Method: Under this method the Monitor will distribute the Distribution Pool to all creditors of Gandhi Canada and Gandhi San Antonio on a *pro rata* basis.

(ii) Corporate Entity Method: Under this approach the estate funds are allocated individually to each Gandhi Group entity based upon the relative proportion of the net assets of each individual entity. The creditors would

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<sup>4</sup> The value of those companies' intercompany liabilities greatly exceeded the value of their assets.

be entitled to receive a distribution solely from the entity they filed their claim against.

3.4.3 The following tables summarize the estimated distribution available to the creditors under each method. As illustrated, the creditors of Gandhi San Antonio receive a comparatively lower distribution under the Corporate Entity Method as compared to the Consolidated Method (detailed calculations are also presented in Appendix L to this Report). The allocation of the funds available under the two distribution methods is the combination of: (i) the allocation of the Purchase Price net of intercompany balances, as described above; and (ii) bank account (cash) balances recovered from the various corporate entities.

<b>Estimated Distribution - Consolidated Entities vs. Corporate Entity</b>			
<b>Creditor of:</b>	<b>Consolidated Gandhi Canada and Gandhi San Antonio</b>	<b>Corporate Entity</b>	<b>Consolidated All Gandhi Entities</b>
Gandhi Canada	28.1¢	30.3¢	21.0¢
Gandhi Holdco	0.4¢	0.4¢	21.0¢
Gandhi San Antonio*	28.1¢	6.2¢	21.0¢
Gandhi Holdings* ^	0.0¢	0.0¢	21.0¢

<b>Share of Proceeds Available to Creditors</b>			
<b>Creditors</b>	<b>Consolidated Gandhi Canada and Gandhi San Antonio</b>	<b>Corporate Entity</b>	<b>Consolidated All Gandhi Entities</b>
Trade creditors - Canada	\$3,637,000	3,923,000	2,717,000
Trade creditors - USA	4,692,000	1,030,000	3,505,000
TA Associates	11,495,000	14,871,000	8,460,000
Gandy, Gandy, Garmoe	-	-	5,247,000
James Gandy	105,000	105,000	incl. above
<b>Total</b>	<b>\$ 19,929,000</b>	<b>19,929,00</b>	<b>19,929,000</b>

3.4.4 For the reasons set out below, it is the Monitor's position that the Consolidated Method represents a fair and reasonable distribution of the Distribution Pool to unsecured creditors of Gandhi Canada and Gandhi San Antonio in the

circumstances and recommends that this Court approve a consolidated plan of compromise and arrangement of Gandhi Canada and Gandhi San Antonio:

- a) This Court has previously approved the filing of a consolidated plan. The same reasons that warranted the approval of the filing of a consolidated plan of the Gandhi Group, continue to support the filing of a consolidated plan. However, for the reasons described above, a consolidated plan of compromise and arrangement of the Gandhi Group as a whole is no longer equitable. As a result, the Monitor is continuing to recommend a consolidated plan that excludes Gandhi Holdings and Gandhi Holdco.
- b) While many of the creditors resided in the U.S. and submitted claims against Gandhi San Antonio, their goods were used to manufacture products in Canada which were sold by Gandhi Canada. This resulted in a receivable or inventory being recorded in Gandhi Canada's books and records while the trade debt was recorded in Gandhi San Antonio's books and records.
- c) The assets and business functions of Gandhi Canada and Gandhi San Antonio were comingled with all manufacturing done in Canada and distributions managed by Gandhi San Antonio;
- d) Assets were transferred between corporate entities without ensuring intercompany transactions were settled on a timely basis. As all accounts receivable were collected in the U.S., funds were transferred to the bank account of Gandhi Canada as needed to meet operating expenses and obligations to suppliers; and
- e) A substantial amount of cash swept by the Monitor on closing was held in bank accounts in the U.S.; these funds were recorded as assets on the books and records of Gandhi San Antonio but relate to operating activities of Gandhi Canada as well as Gandhi San Antonio.

3.4.5 A decision has been made by the Monitor to not make a distribution to creditors of Gandhi Holdings and Gandhi Holdco until the Arbitration is completed and the



value of the contingent Indemnity Claims is ascertained. Following the completion of the Arbitration and the final resolution of the Indemnity Claims, the Monitor will distribute the funds allocated to these two entities by way of a plan(s) of compromise and arrangement or a bankruptcy.

### 3.5 TA Associates

3.5.1 As demonstrated in section 3.4.3 above, TA Associates will recover approximately \$3.3 million less under a consolidated plan of Gandi Canada and Gandi San Antonio than it would if the Monitor files separate plans for these two Gandi entities.

3.5.2 TA Associates has indicated that it is prepared to support the Monitor's recommendation for the consolidated plan despite the reduced recoveries provided by that Plan on the understanding that the Monitor will take all steps necessary to make distributions by September 30, 2012. TA Associates has advised that while it believes a corporate entity distribution is supportable in the circumstances, it is willing to receive a lower distribution under the consolidated plan in return for a timely distribution (in particular, a distribution on or before September 30, 2012).

3.5.3 The Monitor and TA Associates will enter into a Plan Support Agreement, substantially in the form attached hereto as **Appendix M** pursuant to which:

- a) TA Associates agrees to support the Plan;
- b) the Monitor agrees to, *inter alia*, take all steps necessary to cause distributions under the Plan to be made on or before September 30, 2012.

## 4. THE PLAN

4.1.1 The Monitor seeks an order authorizing it to file the Plan. A copy of the Plan is attached hereto as **Appendix N**.

4.1.2 Below is the summary of the key provisions of the Plan. Any defined term referenced in this section of the Report but not otherwise defined shall have the meaning ascribed to such term in the Plan:

- a) the Plan provides for a single class of unsecured creditors both for purposes of voting on the Plan and for distribution; and
- b) all distributions to Creditors on account of their Proven Claims shall be made in Canadian dollars. Claims originally denominated in U.S. dollars will be distributed to those creditors in U.S. dollars based on the noon spot rate for exchange quoted by the Bank of Canada for exchange such currency to Canadian dollars as at the distribution date.

4.1.3 The Plan is conditional on: (i) the approval of the Plan by creditors of Gandi Canada and Gandi San Antonio; (ii) the Monitor obtaining an order of this Court sanctioning the Plan (the “**Sanction Order**”); and (iii) the Monitor obtaining an order of the U.S. Court recognizing the Sanction Order in the Chapter 15 proceeding.

## **5. CREDITORS’ MEETING**

5.1.1 The Monitor also seeks an order of this Court authorizing it to call, hold and conduct a meeting of creditors of Gandi Canada and Gandi San Antonio (the “**Creditors’ Meeting**”) to consider and vote on the Plan on July 25, 2012. The Creditors’ Meeting is proposed to be held at the offices of the Monitor at 123 Front St. W., Ste. 1200, Toronto, Ontario.

5.1.2 A copy of the draft Plan Filing and Meeting Order is attached hereto as **Appendix O**. The Plan Filing and Meeting Order provides that the Monitor shall send the following documents (collectively, the “**Meeting Materials**”) to all creditors entitled to vote at the Creditors’ Meeting on or before July 4, 2012:

- The Form of Proxy and Voting Letter for use at the Creditors’ Meeting;
- A Notice of Creditors’ Meeting;
- A copy of the Plan; and
- A copy of the Plan Filing and Meeting Order.

- 5.1.3 The Monitor will also post electronic copies of the Meeting Materials on its website at [bdo.ca/gandi](http://bdo.ca/gandi).
- 5.1.4 Each Creditor with a Proven Claim will be entitled to vote at the Creditors' Meeting. A creditor holding a claim that has not finally been resolved as at the date of the Creditors' Meeting shall be entitled to vote at the Creditors' Meeting, but the vote relating to the unresolved portion of the Creditor's Claim shall be recorded and tabulated by the Monitor separately.
- 5.1.5 An officer of the Monitor will act as the chair of the Creditors' Meeting and decide all matters relating to the rules, procedures and conduct of the Creditors' Meeting and the validity of proxies.
- 5.1.6 If the Plan is approved by the Required Majority, the Monitor will bring a motion before this Court for an order sanctioning the Plan on July 31, 2012.

## 6. STAY EXTENSION

- 6.1.1 The current stay of proceedings expires on June 30, 2012. A copy of the last stay extension order of Mr. Justice Morawetz dated June 6, 2012 is attached hereto as Appendix "P".
- 6.1.2 The restructuring proceeding of the Gandhi Group is essentially complete subject to resolution of certain disputed claims. The Monitor holds the estate funds, including proceeds from the sale of the Gandhi Group's business and assets to Agfa, in trust for distribution to unsecured creditors.
- 6.1.3 The Monitor is working diligently and in good faith to effect a distribution to Gandhi Group's creditors. An extension of the stay of proceedings is necessary in order to permit the Monitor the time to:
- a) resolve the outstanding disputed claims;
  - b) obtain the approval of the U.S. Court of the filing of the Plan and the allocation of Gandhi Canada's and Gandhi San Antonio's estate funds;
  - c) call and hold the Creditors' Meeting; and

- d) obtain and order sanctioning the Plan;
- e) obtain an order before the U.S. Court recognizing the sanction order; and
- f) implement the Plan.

6.1.4 As a result, the Monitor seeks an extension of the stay of proceedings to September 30, 2012. If the Plan is approved by the creditors voting at the Creditors' Meeting, the Monitor will return to Court on or around July 31, 2012 to seek an order sanctioning the Plan.

## **7. FEES AND EXPENSES OF THE MONITOR**

7.1.1 The Monitor seeks the approval of its professional fees and disbursements and the fees and disbursements of its Canadian counsel.

7.1.2 The professional fees and disbursement of BDO Canada Limited total \$125,509.30 (which includes HST) for the period from September 1, 2011 to May 31, 2012. An affidavit regarding the Monitor's professional fees and disbursements is included in the Motion Record of the Monitor.

7.1.3 The legal fees of the Monitor's Canadian legal counsel, Chaitons LLP, total \$76,518.76 (which includes miscellaneous disbursements and HST) for the period from August 31, 2011 to March 31, 2012. An affidavit regarding Chaitons LLP's professional fees and disbursements is included in the Motion Record of the Monitor. The Monitor has reviewed the time entries submitted by Chaitons LLP and finds the work performed and charges incurred to be appropriate and reasonable.

## **8. SUMMARY AND RECOMMENDATIONS**

8.1.1 The Monitor respectfully requests the Court grant the Monitor's motion for:

- a) an order approving the filing of the Plan and authorizing the Monitor to call a meeting of creditors;

- b) an order approving the Monitor's proposed allocation of estate funds among the Gandhi Group entities in accordance with Appendix L;
- c) an order approving the professional fees and disbursements of the Monitor and its counsel as set out in this report;
- d) an order approving the Monitor's activities to date as set out in this report; and
- e) an order granting an extension of the stay period to September 30, 2012.

All of which is respectfully submitted this 14<sup>th</sup> day of June 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