



Court No.: 09-CL-8172

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MADAM) FRIDAY, THE 8TH DAY
)
JUSTICE HOY) OF MAY, 2009

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 HIGH YIELD PRIVATE PLACEMENT FUND and
ANY OTHER FUND MANAGED by ROI from time to time**

Applicant

- and -

**GANDI INNOVATIONS LIMITED
GANDI INNOVATIONS HOLDINGS LLC AND GANDI INNOVATIONS LLC**

Respondents

INITIAL ORDER

THIS APPLICATION, made by the Applicant, Return on Innovation Capital Ltd. as agent for ROI Fund Inc., ROI Sceptre Canadian Retirement Fund, ROI Global Retirement Fund and ROI High Yield Private Placement Fund and any other fund managed by ROI from time to time (collectively referred to herein as **“ROI”** or the **“Applicant”**) pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the **“CCAA”**) was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Erle Anderson sworn May 5, 2009 and the Exhibits thereto (the **“Anderson Affidavit”**) and the Affidavit of A. Bruce Johnston sworn May 4, 2009, and on hearing the submissions of counsel for Return on Innovation Capital Ltd, 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

and the affidavit of Trent Garmol sworn May 8, 2009 ✓

Subordinated Debt Fund II, LP (collectively referred to herein as “**TA**”), counsel for State Bank of India (Canada) (“**SBIC**”), counsel for the Respondents, and counsel for BDO Dunwoody Limited, no one else appearing although duly served, and on reading the consent of BDO Dunwoody Limited,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that Gandhi Innovations Limited (“**Gandi Canada**”), Gandhi Innovations Holdings LLC (“**Gandi Holdings**”) and Gandhi Innovations LLC (“**Gandi San Antonio**”) are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the Respondents and/or the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”) between, *inter alia*, any one or all of the Respondents and one or more classes of their secured and/or unsecured creditors as they deem appropriate, subject to paragraph **36** of this Order.

APPOINTMENT OF MONITOR

4. **THIS COURT ORDERS** that BDO Dunwoody Limited is hereby appointed Monitor (the “**Monitor**”), pursuant to the CCAA, an officer of this Court, to monitor all of the Respondents’ current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”) and to monitor the Respondents’ business (the “**Business**”) with the powers and obligations set out in the CCAA or set forth herein and that the Respondents and their respective shareholders, officers,

directors, and Assistants (defined below) shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations.

5. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby empowered and authorized, but not obligated, to do any of the following where the Monitor considers it necessary or desirable:

- (a) monitor the Respondents' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Respondents, to the extent required by the Respondents, in their dissemination, to SBIC and its counsel, and the Applicant and its counsel, on a bi-weekly basis of financial and other information as reasonably required by the Applicant and SBIC which may be used in these proceedings including reporting on a basis to be agreed with SBIC and the Applicant;
- (d) advise the Respondents in their preparation of the Respondents' cash flow statements and reporting required by SBIC and the Applicant which reporting shall be reviewed with the Monitor and delivered to SBIC and its counsel, and the Applicant and its counsel, on a periodic basis, but not less than bi-weekly, or as otherwise agreed to by SBIC and the Applicant;
- (e) advise and assist the Applicant and the Respondents, to the extent required, in connection with any Restructuring (defined below);
- (f) apply to or assist the Respondents in their application to any court in any other jurisdiction as the Respondents or the Monitor deems necessary or desirable for an Order recognizing these CCAA Proceedings and giving full force and effect in any such jurisdiction to this Order or any Order of this Court made in these CCAA Proceedings, and to act as a "foreign representative" of the Respondents or any one of them in any proceedings

outside of Canada, including, without limitation, Chapter 15 proceedings under the U.S. Bankruptcy Code, as the Monitor deems necessary or desirable;

- (g) advise the Respondents and/or the Applicant in their development of the Plan and any amendments to the Plan;
- (h) assist the Respondents and/or the Applicant, to the extent required by the Respondents and/or the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (i) engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (j) consider, and if deemed advisable by the Monitor, prepare a report and assessment on the Plan;
- (k) have full and complete access to the books, records and management, employees and advisors of the Respondents and to the Business and the Property to the extent required to perform its duties arising under this Order;
- (l) require access to the Key Codes (as defined and more particularly detailed in the Anderson Affidavit), and all software and servers associated with the use thereof;
- (m) report to, meet with and discuss with such affected Persons (defined below) as the Monitor deems appropriate, including, without limitation, the Applicant and SBIC, on all matters relating to the Property and these proceedings, and to share information, subject to such terms as to confidentiality as the Monitor deems advisable; and

- (n) perform such other duties and take any steps reasonably incidental to the exercise of these powers and as are required by this Order or by this Court from time to time.

6. **THIS COURT ORDERS** that the Monitor shall, as soon as practicable after the making of this Order, assist the Respondents ^{as such that as} ~~in preparing~~ cash flow statements, and return and report to Court with respect to the cash flow statements.

*are prepared by
May 15, 2009*

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE MONITOR

7. **THIS COURT ORDERS** that (i) the Respondents, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, including, without limitation, James Gandy and Hary Gandy, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Monitor of the existence of any Property in such Person's possession or control, and shall grant immediate and continued access to the Property to the Monitor.

8. **THIS COURT ORDERS** that all Persons, including, without limitation, James Gandy and Hary Gandy, shall make available to the Monitor all books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Respondents, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Monitor or permit the Monitor to make, retain and take away copies thereof and grant to the Monitor unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 8 or in paragraph 9 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Monitor due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

9. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service

provider or otherwise, all Persons in possession or control of such Records, including, without limitation, James Gandy and Hary Gandy, shall forthwith give unfettered access to the Monitor for the purpose of allowing the Monitor to access and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Monitor in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Monitor. Further, for the purposes of this paragraph, all Persons shall provide the Monitor with all such assistance in gaining immediate access to the information in the Records as the Monitor may in its discretion require including providing the Monitor with instructions on the use of any computer or other system and providing the Monitor with any and all access codes, account names and account numbers that may be required to gain access to the information.

10. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

11. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Respondents, including, without limitation, SBIC and the Applicant, with information provided by the Respondents in response to reasonable requests for information made in writing by such

creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Respondents is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Respondents may agree.

12. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

13. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and counsel to the Respondents shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Respondents as part of the costs of these proceedings. The Respondents are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, and counsel to the Respondents on at least a bi-weekly basis. In addition, counsel to the Applicant are entitled to their costs of these proceedings including this application and shall be granted a charge (the “**ROI Charge**”) on the Property in the amount of \$150,000 as security for their fees and disbursements incurred at the standard rates and charges of the counsel to the Applicant, which charge shall have the priority set out in paragraphs **37** and **39** hereof.

14. **THIS COURT ORDERS** that the Monitor, its legal counsel and counsel to the Respondents shall pass their accounts from time to time, and for this purpose the accounts of the Monitor, its legal counsel and counsel to the Respondents are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

15. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and counsel to the Respondents, shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$500,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor, its legal counsel and counsel to the Respondents, both before

and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 37 and 39 hereof.

POSSESSION OF PROPERTY AND OPERATIONS

16. **THIS COURT ORDERS** that the Respondents shall remain in possession and control of the Property. Subject to further Order of this Court, the Respondents shall continue to carry on the Business in a manner consistent with the preservation of their Business and Property and substantially in accordance with any cash flows approved by this Court. The Respondents shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

17. **THIS COURT ORDERS** that, pending further Order of the Court, the Respondents shall not transfer, pledge, sell, convey, mortgage or otherwise dispose of any of the Property to any of the Respondents or related parties, or make payment to any of the Respondents or related parties, including, without limitation, payments to any existing or former officers or directors of the Respondents, other than payments for goods and services in the ordinary course, except with the consent of the Monitor or as otherwise provided and permitted herein.

17A. **THIS COURT ORDERS** that all receipts of the Respondents shall be deposited into the respective accounts of the Respondents with SBIC, or another financial institution in North America approved by SBIC and the Monitor.

17B. **THIS COURT ORDERS** that in addition to the power of the Monitor under paragraph 5 (a) of this Order, the Respondents shall not make any disbursements exceeding \$10,000 without the approval of the Monitor.

18. **THIS COURT ORDERS** that the Respondents shall not file or commence any proceedings under the *Bankruptcy and Insolvency Act* or any other insolvency legislation without the prior written consent of the Applicant and the Monitor, or Order of this Court.

19. **THIS COURT ORDERS** that the Respondents shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay, and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Respondents in respect of these proceedings, at their standard rates and charges.

20. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Respondents shall be entitled but not required to pay all reasonable expenses incurred by the Respondents in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Respondents following the date of this Order.

21. **THIS COURT ORDERS** that the Respondents shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Respondents in connection with the sale of

goods and services by the Respondents, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Respondents.

22. **THIS COURT ORDERS** that until such time as any of the Respondents delivers a notice in writing to repudiate a real property lease in accordance with paragraph **24(c)** of this Order (a “**Notice of Repudiation**”), the Respondents shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between any one of the Respondents and its landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any arrears relating to the period commencing from and including the date of this Order shall also be paid. Upon delivery of a Notice of Repudiation, the Respondents shall pay all Rent due for the notice period stipulated in paragraph **24(c)** of this Order, to the extent that Rent for such period has not already been paid.

23. **THIS COURT ORDERS** that, except as specifically permitted herein, the Respondents are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Respondents to any of their respective creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

24. **THIS COURT ORDERS** that the Respondents shall, subject to the prior approval of the Monitor, in consultation with SBIC and the Applicant, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their business or operations and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$500,000 in the aggregate, subject to paragraph **24(c)**, if applicable;
- (b) terminate the employment of such of its employees or temporarily lay off such of their employees as they deem appropriate on such terms as may be agreed upon between the Respondents and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;
- (c) in accordance with paragraphs **25** and **26**, vacate, abandon or quit the whole but not part of any leased premises and/or repudiate any real property lease and any ancillary agreements relating to any leased premises, on not less than fourteen (14) days notice in writing to the relevant landlord on such terms as may be agreed upon between the applicable Respondent and such landlord, or failing such agreement, to deal with the consequences thereof in the Plan;
- (d) repudiate such of its arrangements or agreements of any nature whatsoever, whether oral or written, as the Respondents deem appropriate on such terms as may be agreed upon between the applicable Respondent and such counter-parties, or failing such agreement, to deal with the consequences thereof in the Plan; and
- (e) pursue all avenues of refinancing and offers for material parts of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing or any sale (except as permitted by subparagraph (a), above),

all of the foregoing to permit the Respondents to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

25. **THIS COURT ORDERS** that the Respondents shall provide each of their landlords with notice of the Respondents intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the applicable Respondent's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the applicable Respondent, or by further Order of this Court upon application by the Respondent on at least two (2) days notice to such landlord and any such secured creditors. If any Respondent repudiates the lease governing such leased premises in accordance with paragraph **24(c)** of this Order, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in paragraph **24(c)** of this Order), and the repudiation of the lease shall be without prejudice to the Respondent's claim to the fixtures in dispute.

26. **THIS COURT ORDERS** that if a Notice of Repudiation is delivered, then (a) during the notice period prior to the effective time of the repudiation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the applicable Respondent and the Monitor 24 hours' prior written notice, and (b) at the effective time of the repudiation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the applicable Respondent in respect of such lease or leased premises and such landlord shall be entitled to notify the applicable Respondent of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE RESPONDENTS OR THE PROPERTY

on May 19, 2009 ✓

27. **THIS COURT ORDERS** that until and including ~~June 8~~, 2009, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of any one or all of the Respondents or the Monitor, or affecting the Business or the Property, except with the written consent of the Respondents and the Monitor, or with leave of this Court, and any

and all Proceedings currently under way against or in respect of the Respondents or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court. Notwithstanding any provision of this Order, pending the granting of any Order recognizing the within proceeding as foreign main proceeding pursuant to Chapter 15 of the US Bankruptcy Code, there shall be no stay of proceedings with respect to the complaint filed in The Presiding District Court of Bexar County, Texas by TA as Plaintiffs as against the Respondents, Gandi Innovations Holdings LLC and Gandi Innovations LLC and other Defendants.

NO EXERCISE OF RIGHTS OR REMEDIES

28. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any Person against or in respect of any one or all of the Respondents or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Respondents and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Respondents to carry on any business which the Respondents are not lawfully entitled to carry on, (ii) exempt the Respondents from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

29. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by any of the Respondents, except with the written consent of the Respondents and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

30. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with any of the Respondents or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Respondents, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the

supply of such goods or services as may be required by the Respondents, and that the Respondents shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Respondents in accordance with normal payment practices of the Respondents or such other practices as may be agreed upon by the supplier or service provider and each of the Respondents and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

31. **THIS COURT ORDERS** that, notwithstanding anything else contained herein, no creditor of any of the Respondents shall be under any obligation after the making of this Order to advance or re-advance any monies or otherwise extend any credit to any of the Respondents. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

32. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.5(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of any of the Respondents with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of any of the Respondents whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Respondents, if one is filed, is sanctioned by this Court or is refused by the creditors of the Respondents or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

33. **THIS COURT ORDERS** that the Respondents shall indemnify its directors and officers from all claims, costs, charges and expenses relating to the failure of the Respondents, after the date hereof, to make payments of the nature referred to in subparagraphs **19(a)**, **21(a)**, **21(b)** and **21(c)** of this Order which they sustain or incur by reason of or in relation to their respective capacities as directors and/or officers of the Respondents except to the extent that, with respect to

any officer or director, such officer or director has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct.

34. **THIS COURT ORDERS** that the directors and officers of the Respondents shall be entitled to the benefit of and are hereby granted a charge (the “**Directors’ Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$100,000, as security for the indemnity provided in paragraph **33** of this Order. The Directors’ Charge shall have the priority set out in paragraphs **37** and **39** herein.

35. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors’ Charge, and (b) the Respondents’ directors and officers shall only be entitled to the benefit of the Directors’ Charge to the extent that they do not have coverage under any directors’ and officers’ insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph **33** of this Order.

SBIC

36. **THIS COURT ORDERS** that SBIC shall be treated as an unaffected creditor in any Plan filed by the Respondents and/or the Applicant under the CCAA, and SBIC shall be unaffected by the stay of proceedings contained herein and it shall be entitled to exercise its rights and remedies under or in connection with the credit facilities extended by SBIC to Gandi Canada and guaranteed by, among others, Gandi San Antonio, and all security granted by the Respondents in connection therewith (collectively, the “**SBIC Security**”) with the consent of the Monitor and the Respondents, or with leave of the Court obtained upon not less than five days’ prior notice to the Respondents and the Monitor.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

37. **THIS COURT ORDERS** that the priorities of the Administration Charge, the SBIC Security, the Directors’ Charge, and the ROI Charge, (collectively, the “**Charges**”), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$500,000);

Second – SBIC Security (subject to the review and report of the Monitor on the SBIC Security);

Third – Directors' Charge (to the maximum amount of \$100,000); and

Fourth – ROI Charge (to the maximum amount of \$150,000).

38. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

39. **THIS COURT ORDERS** that the Charges shall constitute a charge on the Property and the Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person, subject to paragraph 37 of this Order.

40. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Respondents shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the Charges, unless the Respondents also obtain the prior written consent of SBIC, the Monitor, and the beneficiaries of the Charges, or further Order of this Court.

41. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) and/or the Monitor shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease,

sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Respondents, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges shall create or be deemed to constitute a breach by the Respondents of any Agreement to which any one of them is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Respondents pursuant to this Order, and the granting of the Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

42. **THIS COURT ORDERS** that to the extent the Charges created by this Order extend to leases of real property in Canada, the Charges shall only charge the Respondents’ interest in such real property leases.

SERVICE AND NOTICE

43. **THIS COURT ORDERS** that the Monitor shall, within ten (10) business days of the date of entry of this Order, send a copy of this Order to known creditors of the Respondents, other than employees and creditors to which any Respondent owes less than \$1,000, at their addresses as they appear on the Respondents’ records, and shall promptly send a copy of this Order (a) to all parties filing a Notice of Appearance in respect of this Application, and (b) to any other interested Person requesting a copy of this Order.

44. **THIS COURT ORDERS** that Monitor is at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Respondents’ creditors or other interested parties at their respective addresses as last shown on the records of the Respondents and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day

following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

45. **THIS COURT ORDERS** that the Respondents, SBIC, the Applicant, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, in accordance with the E-filing protocol of the Commercial List to the extent practicable, and the Monitor may post a copy of any or all such materials on its website at www.bdo.ca/gandi.

GENERAL

46. **THIS COURT ORDERS** that the Applicant, Respondents or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

47. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as a receiver, a receiver and manager, or a trustee in bankruptcy of the Respondents, the Business or the Property.

48. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, including, without limitation, the United States Bankruptcy Court for the Western District of Texas, San Antonio Division, to give effect to this Order and to assist the Respondents, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Respondents and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Respondents and the Monitor and their respective agents in carrying out the terms of this Order.

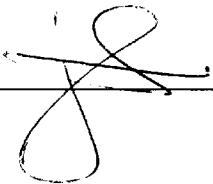
49. **THIS COURT ORDERS** that each of the Applicant, Respondents and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or

administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

50. **THIS COURT ORDERS** that any interested party (including the Respondents, the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

51. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Daylight Savings Time on the date of this Order.

5234433.3



Joanne Nicoara
Registrar, Superior Court of Justice

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

MAY 08 2009

PER / PAR: *JN*

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceedings commenced at Toronto

INITIAL ORDER

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
Suite 1800, Box 754
181 Bay Street
Toronto, ON M5J 2T9

D. Robb English (#19862F1B)
Stephanie A.F. Grace (#45403I)

Tel: 416.863.1500
Fax: 416.863.1515

Solicitors for the Applicant,
Return on Innovation Capital Ltd.