

**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

FOURTEENTH REPORT OF THE MONITOR

MARCH 1, 2011

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1. PURPOSE

1.1 The purpose of this Fourteenth report of the Monitor is:

- to request an extension of the stay of proceedings until June 30, 2011.

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”) (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**.

2.1.2 The Initial order granted Gandhi a stay of proceedings, which currently expires on March 4, 2011.

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 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.

2.1.5 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.

- 2.1.6 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.
- 2.1.7 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”).
- 2.1.8 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.
- 2.1.9 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**.
- 2.1.10 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.

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

2.2 Claims Process, Disputed Claims and Plan of Arrangement and Compromise

Claims Process and Disputed Claims

2.2.1 The Claims Process is substantially complete with the exception of a few unresolved claims. The details of the Claims Process are set out in detail in the Monitor's Twelfth Report to the Court dated December 3, 2010.

2.2.2 In total 213 claims were filed 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 five claims, all related to the former directors and officers of the Gandi Group, are currently unresolved and have not been admitted. The aggregate value of the unresolved claims is CAD\$89,461,952.

2.2.3 Two of the unresolved claims were filed by Hary Gandy ("Hary") and Trent Garmoe ("Garmoe") pursuant to the Claims Procedure Order in respect of unpaid pre-filing and post-filing wages and bonuses, termination and severance pay in the total amount of \$1,667,972 (the "Employment Claims"). The remaining three disputed claims are indemnity claims by Hary, Garmoe and James Gandy ("James") for \$87,783,980. Details of the indemnity claims are set out in Section 2.3 below.

Consolidated Plan of Arrangement and Compromise

2.2.4 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 represented the most equitable distribution for the unsecured creditors of the Gandi Group and proceeded to develop such plan.

2.2.5 On December 3, 2010, the Monitor served motion materials in support of a motion, originally returnable December 10, 2010, for an order, *inter alia*, authorizing the Monitor to file a consolidated plan of compromise and

arrangement of the Gandhi Group and call a meeting of the Gandhi Group's creditors to consider and vote on the plan.

- 2.2.6 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, counsel for Hary, James (together with Hary, the "Gandys") and Garmoe. At this time, Mr. DeCristofaro advised counsel for the Monitor that, among other things, the Gandys and Garmoe will be seeking an adjournment of the Monitor's motion.
- 2.2.7 Mr. DeCristofaro also advised the Monitor that 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") had revived its arbitration proceeding against Garmoe and the Gandys and, as a result, Garmoe and the Gandys intend to file new claims against the Gandhi Group which claims allegedly arise pursuant to indemnity provisions in the Amended and Restated Limited Liability Company Agreement of Gandhi Holdings with TA Associates (the "Indemnity Claims").
- 2.2.8 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 would not consent to the late filing of the additional claims and that Mr. DeCristofaro's clients would have to bring a motion before this Court for leave to file these claims late.
- 2.2.9 On December 20, 2010, the Monitor received the Gandys and Garmoe's Indemnity Claims against the Gandhi Group. The Gandys Indemnity Claims were each in the amount of CAD\$75,962,480; Garmoe's was in the amount of CAD\$87,783,980.
- 2.2.10 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 (the “Amended Plan Filing and Meeting Order”).

2.2.11 The Amended Plan Filing and Meeting Order, among other things, provided that the Monitor will hold a meeting of creditors for the purpose of voting on the plan filed on February 22, 2011. In addition, in the event the plan was approved, the Amended Plan Filing and Meeting Order provided that the sanction hearing in respect of the plan would be held on February 28, 2011.

2.2.12 On January 26, 2011, the U.S. Court recognized the Amended Plan Filing and Meeting Order.

2.2.13 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 which was scheduled for February 22, 2011.

2.3 Late Filed Indemnity Claims

2.3.1 On February 18, 2011, the Gandys and Garmoe sought and obtained leave of this Court to file the Indemnity Claims pursuant to the Endorsement of the Honourable Mr. Justice Morawetz dated February 22, 2011. A copy of this Endorsement is attached hereto as **Appendix C**.

2.3.2 The Monitor with the assistance its counsel is in the process of investigating and disputing the validity and quantum of both the Indemnity and Employment Claims.

2.4 The Meeting of Creditors

2.4.1 On February 22, 2011 the Monitor convened the already scheduled Meeting of Creditors. Nine creditors with admitted claims attended in person. The Gandys’ and Garmoe’s proxy representative was also in attendance.

2.4.2 The Monitor explained to those present the events that had transpired since the Filing Date including the nature of the Indemnity Claims and the recent court decision which allowed the Indemnity Claims to be late filed. In an attempt to minimize the costs associated with calling a second meeting of creditors and redistributing the voting materials, the Monitor proposed holding a vote to obtain conditional approval of the plan of compromise and arrangement should the Indemnity Claims be dismissed.

2.4.3 With the consent of the creditors present, the vote was conducted via voting letters and proxies. The following table shows creditors with admitted claims unanimously voted in favour of the current plan of arrangement and compromise. The representative of the Gandy's and Garmoe who held a proxy to vote in respect of the disputed Employment Claims abstained from the vote.

	In #	In \$ value
<u>Admitted Claims:</u>		
Voting in favour of the Plan	108 (100%)	\$19,455,781 (100%)
Voting Against the Plan	nil	nil
<u>Disputed Claims:</u>		
Voting in favour of the Plan	Nil	Nil
Voting Against the Plan	Nil	Nil
Abstentions	2 (100%)	\$1,677,971 (100%)

3. SUMMARY AND RECOMMENDATIONS

3.1.1 The Monitor respectfully requests the Court extend the stay of proceedings to June 30, 2011 to allow the Monitor time to investigate the validity of the Indemnity Claims and consider the need to file an amended plan of arrangement and compromise.

All of which is respectfully submitted this 1st day of March, 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', with a long horizontal flourish extending to the right.

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