

Court File No. 09-CL-8172

**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**

**TENTH REPORT OF THE MONITOR**

**March 4, 2010**

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## **1. Introduction and Background**

### **1.1 Introduction**

- 1.1.0 Gandhi Innovations Limited (“Gandhi Canada”), Gandhi Innovations Holdings LLC, (“Gandhi Holdings”), and Gandhi Innovations LLC (“Gandhi San Antonio”) (collectively referred to herein as “Gandhi” or the “Gandhi Group”) obtained protection under the *Companies’ Creditors Arrangement Act* (“CCAA”) pursuant to an Order of this Honourable Court dated May 8, 2009 (the “Initial Order”). A copy of the Initial Order is attached as Appendix A.
- 1.1.1 The CCAA application was commenced by Return on Innovation Capital Ltd., as agent (“ROI”), a term lender of the Gandhi Group, owed approximately \$15.0 million, and was supported by State Bank of India (Canada) (“SBI”), the operating lender to the Gandhi Group, owed approximately \$17.0 million, and by 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.
- 1.1.2 The Initial Order appointed BDO Dunwoody Limited as the Monitor of the Gandhi Group (the “Monitor”). Pursuant to Articles of Amendment effective November 12, 2009, the corporate name of BDO Dunwoody Limited has been changed to BDO Canada Limited.
- 1.1.3 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 (“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 the Foreign Proceeding pursuant to Chapter 15 was issued June 5, 2009.

- 1.1.4 On November 25, 2009, this Court approved the sale of substantially all of the business and assets of the Gandhi Group, Gandhi Innovations Hold Co. (“Gandhi Holdco”) and Gandhi Special Holdings LLC (“Gandhi Special”) 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 the Gandhi Group and Agfa (the “Sale Agreement”) and granted an Order vesting title to the purchased assets in and to Agfa (the “Approval and Vesting Order”). This Honourable Court also added Gandhi Holdco and Gandhi Special as debtors to the Gandhi CCAA proceeding.
- 1.1.5 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. On December 10, 2009 this Court issued an Amended and Restated Approval and Vesting Order, attached as Appendix B.
- 1.1.6 On January 8, 2010 the U.S. Court granted an order recognizing the Amended and Restated Approval and Vesting Order, a copy of which is attached hereto as Appendix C.
- 1.1.7 On January 15, 2010, the Monitor closed the sale of substantially all of the business and assets of the Gandhi Group, Gandhi Holdco and Gandhi Special to Agfa.
- 1.1.8 The details of the sale transaction and the calculations of the Purchase Price are set out at section 2.3 of the Monitor’s Ninth Report dated January 22, 2010 (the “Ninth Report”). A copy of the Ninth Report without appendices is attached hereto as Appendix D.
- 1.1.9 The total estimated purchase price (the “Purchase Price”) from the sale to Agfa is approximately USD\$43.4 million. Sale proceeds totaling USD\$25.1 million have been received by the Monitor. The balance of the Purchase Price is payable over a period of two years.

1.1.10 The final Purchase Price will depend largely on collection of accounts receivable of the Gandhi Group and is expected to generate a meaningful dividend to the unsecured creditors of the Gandhi Group.

## **1.2 Purpose**

1.2.0 The purpose of this Tenth Report of the Monitor is to provide this Honourable Court with information in respect of:

- (a) the activities of the Monitor since the filing of the Ninth Report;
- (b) the claims process the Monitor proposes to administer to identify and quantify claims against the Gandhi Group;
- (c) the request for approval of the Monitor's fees for the period from September 19, 2009 to February 15, 2010;
- (d) the request for approval of the Monitor's Canadian counsel's fees for the period from September 1, 2009 to January 31, 2010;
- (e) the request for approval of the Monitor's US counsel's fees from September 1, 2009 to January 31, 2010;
- (f) the request for expanded powers of the Monitor; and
- (g) an extension of the stay of proceedings to September 15, 2010.

## **1.3 Background**

1.3.0 Gandhi was a manufacturer and distributor of high performance wide format digital printers and grand format printers.

1.3.1 Gandhi was headquartered in Canada where it carried on business out of leased premises located at 5975 Falbourne Street, Mississauga. The premises consist of an 185,000 square foot state-of-the-art complex which includes a 9,000 square foot demonstration facility and a finishing display area for larger-than-life images.

1.3.2 The Gandhi Group and related entities include the following: Gandhi Canada, Gandhi San Antonio, Gandhi Innovations FZCO ("Gandhi Dubai"),

Gandi Innovations BVBA (“Gandi Belgium”), Gandi Innovations S.A. de C.V. (“Gandi Mexico”, together with Gandi Dubai and Gandi Belgium, the “Gandi Foreign Subsidiaries”) and SuperWide Connection S.A. de C.V.

## **2. Monitor’s Activities**

### **2.1 Closing of the Agfa Sale Transaction**

2.1.0 The transaction contemplated by the Sale Agreement (the “Sale Transaction”) closed on January 15, 2010. Following the close of the Agfa sale transaction, the Gandi Group does not continue to carry on business or employ any employees. All former employees of the Gandi Group have either been retained by Agfa or have had their contracts of employment terminated.

2.1.1 As set out in the Ninth Report, the final Purchase Price will be determined based upon the Closing Date Statements (as such term is defined in the Sale Agreement) to be prepared and delivered by Agfa to the Monitor and to Gandi no later than 90 days after closing. Agfa is in the process of preparing the Closing Date Statements.

2.1.2 The Monitor’s activities, since the date of the last Report, have been largely focused on completing the Sale Transaction, including:

(a) Preparing tax filings to Mexico relating to the sale of the shares of the Mexican foreign subsidiary. The Monitor has retained legal and accounting advisors to assist with this matter;

(b) The Monitor coordinated with counsel for the Gandi Group a change of the names of Gandi Special Holdings LLC, Gandi Innovations Holdings LLC, Gandi Innovations Limited, Gandi Innovations Hold Co. and Gandi Innovations LLC., in accordance with the Sale Agreement to GI (2010) Special Holdings LLC, GI (2010) Holdings LLC, GI (2010) Limited, GI (2010) Hold Co. and SA GI (2010) LLC, respectively;

- (c) The Monitor has been dealing with the disclaimer of various equipment leases which were not assumed by Agfa. In addition, it is anticipated that the Monitor will disclaim, in due course, two commercial leases related to the premises which Agfa is in the process of vacating in San Antonio Texas;
- (d) The Monitor coordinated the obtaining of resolutions and such other documents as was required by the Dubai government to effect the transaction for the sale of shares of the Gandhi Dubai pursuant to the Sale Agreement; and
- (e) The Monitor assisted Agfa with obtaining registered ownership of certain Gandhi Companies' domain names forming part of the purchased assets under the Sale Agreement legal and beneficial ownership of which had been claimed by a former Gandhi employee.

## **2.2 Bank Account Sweeps**

2.2.0 The sale transaction with Agfa related to substantially all assets of the Gandhi Group but excluded cash balances at the date of closing. Subsequent to closing, the Monitor reconciled Gandhi's bank accounts and arranged for transfer of the available cash, net of outstanding cheques, to the Monitor's bank account. In total, \$9.3 million US and \$879,000 CDN were transferred.

2.2.1 Each of Gandhi's bank accounts currently remains open to allow the remaining outstanding cheques to clear and facilitate customer wire payments. The Monitor is working on closing these bank accounts.

## **2.3 Distribution to SBI and ROI**

2.3.0 On January 28, 2010, pursuant to the Distribution Order of the Honourable Justice Morawetz (Appendix E), the Monitor made interim distributions to Gandhi's secured creditors ROI and SBI. At the same time,

the Monitor entered into reimbursement agreements with these creditors.

2.3.1 The interim distribution to ROI was CDN\$16,723,724. The ROI reimbursement agreement is included as Appendix F.

2.3.2 The interim distribution to SBI was CDN\$12,273,879.21. The SBI reimbursement agreement is included as Appendix G.

#### **2.4 Payment of Pre-Closing Expenses**

2.4.0 The Monitor continues to pay the post-filing pre-closing expenses which were incurred in the normal course of business (predominately payroll and operating costs). To date approximately CDN\$590,000 has been paid from the Monitor's accounts with respect to these expenditures.

2.4.1 A schedule presenting the disbursements made and funds in the Monitor's trust accounts is included as Appendix H. The disbursements are summarized as:

(a) Pre-closing payroll expenses - CDN\$418,400

(b) Pre-closing operating costs - CDN\$171,700

(c) Interim payment against GCA Savvian's transaction fee - CDN\$500,000

(d) Professional fees - CDN\$482,000

(e) Other - CDN\$2,200

\* US dollar denominated expenses were converted at the average rate of \$1USD = \$1.06CDN.

2.4.2 The Monitor has paid certain post-closing costs on behalf of Agfa for simplicity and expediency (i.e. services for the month of January where a portion is post-closing). These post-closing disbursements will be included as purchase price adjustments. To date post-closing costs paid by the Monitor on behalf of Agfa amount to approximately \$16,700.



2.4.3 The Monitor currently holds approximately USD\$4.8 million and CDN\$1.7 million in its trust accounts.

### **3. Claims Procedure**

#### **3.1 General**

3.1.0 The proceeds from the sale of the assets of the Gandhi Companies, together with cash on hand, are more than sufficient to pay all known secured and priority claims and generate a dividend to unsecured creditors. Accordingly, the Monitor proposes to conduct a claims procedure (the "Claims Procedure") for the purpose of identifying the nature and amount of creditors' claims against the Gandhi Group, in accordance with the form set out in the draft order (the "Claims Procedure Order") attached hereto as Appendix I. The Claims Procedure Order, if approved, will also provide for a process for soliciting claims against directors and officers of the Gandhi Companies. A summary of the proposed Claims Procedure is set out in this section of the Report. All defined terms not otherwise defined in this section of the Report, shall be given the meaning ascribed to such terms in the Claims Procedure Order.

3.1.1 The Claims Procedure is intended to identify claims against the Gandhi Companies existing as at May 8, 2009 (the "Filing Date"), as well as post-filing claims (collectively, the "Claims"). In particular, the Claims Procedure contemplates the establishment of the following categories of claims:

(a) **Pre-filing Claims:** Claims of any which arose prior to the Filing Date;

(b) **Post-filing Claims:** Claims which arose after the Filing Date, but not including Contract Repudiation Claims and Employment Claims;

- (c) **Contract Repudiation Claims:** Claims arising out of the default, termination, repudiation or disclaimer of any lease, contract, or other agreement by the Gandhi Companies on or after the Filing Date;
- (d) **Employment Claims:** Claims of former employees of the Gandhi Group arising out of the termination of his or her employment contract on or after the Filing Date; and
- (e) **Director and Officer Claims:** Claims against the Directors and Officers of the Gandhi Group which the Directors or Officers of the Gandhi Companies are by law liable to pay in their capacity as Directors or Officers, payable on or after the Filing Date.

### **3.2 Claims Bar Date**

3.2.0 The Monitor proposes that any Person asserting a Claim (including a Director and Officer Claim) be required to file a Proof of Claim with the Monitor prior to 5:00 p.m. (Toronto time) on May 28, 2010 (the "Claims Bar Date").

### **3.3 Notice of Claims Procedure**

3.3.0 Pursuant to the Claims Procedure order, Known Creditors will be notified of the requirement to file Proofs of Claim on or before March 26, 2010 by the following means:

- (a) The Monitor will distribute Proofs of Claim and related instructions and filing information (the "Claims Package") by regular mail to all Known Creditors no later than March 26, 2010.
- (b) By March 26, 2010, the Monitor will place a notice addressed to all potential creditors in the Globe and Mail (National Edition) and My San Antonio.
- (c) The Monitor will post a copy of the Claims Package on its website established for these proceedings at [www.bdo.ca/gandi](http://www.bdo.ca/gandi); and

(d) The Monitor will send a copy of the Claims Package by ordinary mail, as soon as practicable following receipt of a request for a package, to any person claiming to be a creditor and requesting such material prior to the Claims Bar Date.

3.3.1 The Monitor considers that the identification of Known Creditors, mailing and the newspaper advertisement noted above will provide potential creditors with sufficient and timely notification in order for them to submit their Proofs of Claim prior to the Claims Bar Date.

### **3.4 Review of Claims**

3.4.0 Claimants will be asked to submit their Claims to the Monitor. The Monitor will supervise the receipt, collection and examination of all Claims.

3.4.1 The Monitor may: (i) admit any Claim in its entirety; (ii) revise the classification or amount of the Claim; or (iii) disallow the Claim. For those creditors whose claims have been revised or disallowed, the Monitor will send a "Notice of Revision or Disallowance" advising them of this fact and the reasons therefor.

3.4.2 The Claims Procedure allows the Monitor to appoint a Claims Officer to assist in the resolution of claim disputes or have such dispute dealt with by the judge of the Court.

3.4.3 Claimants who intend to dispute the classification or amount of a Notice of Revision or Disallowance must deliver a Notice of Dispute to the Monitor within 20 days of the date of the Notice of Revision or Disallowance. Upon receipt of a Notice of Dispute, the Monitor may attempt to consensually resolve the dispute with the claimant. Unless the dispute is resolved consensually in advance, the Monitor shall deliver a copy of the Creditor's Notice of Dispute to the Claims Officer for resolution or schedule a motion with this Honourable Court to resolve the Claim.

- 3.4.4 If the Claim is referred to a Claims Officer for resolution, the Claims Officer will review and determine the classification and the amount of the Claim in dispute. The Claims Officer will co-ordinate the hearing of the disputed Claim and will notify the Monitor and the Creditor of his or her determination.
- 3.4.5 The Creditor or the Monitor may appeal the Claims Officer's determination by appealing to this Honourable Court within fourteen days of notification of the Claims Officer's determination of the classification and/or value of such Creditor's Claim.
- 3.4.6 If the Claims Procedure Order is approved by this Honourable Court, the Monitor will bring a motion before the U.S. Court to recognize the Claims Procedure Order.

#### **4. Expansion of the Monitor's Powers**

- 4.1.0 Following the closing of the Sale Transaction, all directors and officers of the Gandhi Group have either resigned or have advised the Monitor of their intention to do so. Accordingly, there no longer remains a functioning board of directors of the Gandhi Group.
- 4.1.1 The Monitor has been working diligently to complete the Sale Transaction and resolve any outstanding matters pertaining to winding down of the business affairs of the Gandhi Companies. To the extent the current powers have allowed, the Monitor has addressed various post closing matters. However, in the absence of a functioning board of directors, there will be no one available to execute documents or effect filings or registrations with any governmental or regulatory authorities on behalf of the Gandhi Companies. In addition, certain documents required to effect the transfer of foreign subsidiary shares to Agfa or its nominee in accordance with the Sale Agreement require a resolution of the Board of Directors or Board of Managers of the Gandhi Companies. In the absence

of a functioning board of directors or managers, such transfers could not be completed.

4.1.2 Accordingly, the Monitor seeks an expansion of its powers to the extent necessary to complete the Sale Transaction, wind down the business affairs of the Gandhi Companies and distribute the available cash among creditors through a plan of compromise or arrangement (a "Plan"), a proposal under the *Bankruptcy and Insolvency Act* (a "Proposal") or otherwise.

## **5. Stay Extension**

5.1.0 The current stay period expires on March 10, 2010. An extension of the Stay of Proceedings is necessary in order to deal with various post closing matters and to conduct the Claims Procedure within the deadlines set out in this Report. The Monitor is of the view that no creditor would be materially prejudiced by an extension of the stay period to September 15, 2010.

## **6. Fees and Expenses of the Monitor**

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

6.1.1 The professional fees and disbursements of BDO Canada Limited total \$499,183.30 (which includes Goods and Services Tax) for the period from September 19, 2009 to February 15, 2010. An affidavit regarding the Monitor's professional fees and disbursements is included in the Motion Record of the Monitor.

6.1.2 The legal fees of the Monitor's Canadian legal counsel, Chaitons LLP, total \$325,023.33 (which includes miscellaneous disbursements and Goods and Services Tax) for the period from September 1, 2009 to January 31, 2010. 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 Chaiton's LLP and finds the work performed and charges incurred to be appropriate and reasonable.

6.1.3 The legal fees of the Monitor's US legal counsel, Vinson & Elkins LLP, total [\$242,820.25] (which includes miscellaneous disbursements and Goods and Services Tax) for the period from September 1, 2009 to January 31, 2010. An affidavit regarding Vinson & Elkins LLP's professional fees and disbursements is included in the Motion Record of the Monitor. The Monitor has reviewed the time entries submitted by Vinson & Elkins LLP and finds the work performed and charges incurred to be appropriate and reasonable.

## 7. Summary and Recommendations

7.1.0 The Monitor respectfully requests that the Court approve the Monitor's request for:

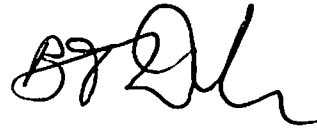
- (a) an order approving the Claims Procedure described above for identifying and quantifying claims against the Gandi Group in the form of the Claims Procedure Order attached to this Report;
- (b) an order expanding the Monitor's powers to allow the Monitor to facilitate the Sale Transaction, wind down the business affairs of the Gandi Companies and file a Plan or a Proposal;
- (c) and order extending the stay period to September 15, 2010;
- (d) an order approving the professional fees and disbursement of the Monitor and its counsel as set out in this report; and
- (e) an order approving the Monitor's conduct and activities described in this Report.

All of which is respectfully submitted this 4<sup>th</sup> day of March, 2010.

**BDO CANADA LIMITED**

**Monitor in the CCAA proceeding of  
Gandi Innovations Limited,  
Gandi Innovations Holdings LLC,  
Gandi Innovations LLC,  
Gandi Innovations Hold Co., and  
Gandi Special Holdings LLC**

**Per:**

A handwritten signature in black ink, appearing to read "BF Davidson", written in a cursive style.

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

**President**