

**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 AND GANDI
INNOVATIONS LLC**

Respondents

FIFTH REPORT OF THE MONITOR

October 2, 2009

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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 \$15.00 million, and was supported by State Bank of India (Canada) (“SBI”), the operating lender to the Gandhi Group, owed approximately \$17.00 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. (collectively “TA”). TA is an equity fund based in Boston, Massachusetts that advanced approximately \$75.00 million by way of debt and equity to the Gandhi Group. ROI, SBI and TA are hereinafter collectively referred to as the “Key Stakeholders”.
- 1.1.2 The Initial Order appointed BDO Dunwoody Limited as the Monitor of the Gandhi Group (the “Monitor”).

- 1.1.3 On June 17, 2009, Gandhi sought and received an extension of the Initial Order to August 18, 2009 (the “Extension Order”). A copy of the Extension Order is attached as **Appendix B**.
- 1.1.4 The Gandhi Group also obtained protection from their creditors in the United States 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*. A copy of the Order Recognizing Foreign Proceeding Pursuant to Chapter 15 (the “Recognition Order”) is attached as **Appendix C**.
- 1.1.5 On June 26, 2009, Gandhi sought and obtained an order approving a sale process for all or substantially all of the assets of the Gandhi Group as a going concern (the “Sale Process Order”). A copy of the Sale Process Order is attached as **Appendix D**.
- 1.1.6 On August 10, 2009, Gandhi sought and obtained a further extension of the stay of proceedings to October 8, 2009 (the “Second Extension Order”). A copy of the Second Extension Order is attached as **Appendix E**. Under that same order, this Honourable Court also authorized and directed Gandhi to make an interim distribution to SBI in the amount of \$4.00 million, subject to SBI entering into a Reimbursement Agreement acceptable to Gandhi, SBI, and the Monitor.

1.2 Purpose

- 1.2.0 The purpose of this Fifth Report of the Monitor is to provide this Honourable Court with information in respect of the following:
- (a) the activities of the Monitor since the filing of the Fourth Report of the Monitor dated August 6, 2009;

- (b) the consolidated cash position and liquidity of Gandhi as at September 18, 2009;
- (c) the financial performance and cash flow forecasts of Gandhi;
- (d) the activities of GCA Savvian Advisors, LLC (“GCA Savvian”) with respect to the marketing and sale of the Gandhi business;
- (e) the Monitor’s request for this Honourable Court’s approval of the Monitor’s activities as set out herein, as well as the approval of the professional fees and disbursements to date of the Monitor, the Monitor’s Canadian legal counsel, and the Monitor’s U.S. legal counsel; and
- (f) the request of Gandhi for an extension of the stay of proceedings to November 23, 2009.

1.3 Terms of Reference

1.3.0 The information contained in this report has been obtained from the accounting records of Gandhi and is based on discussions with and representations made by senior management. The information contained, herein, has not been audited and the Monitor makes no representations about its accuracy or completeness.

1.4 Background

1.4.0 Gandhi is a manufacturer and distributor of high performance wide format digital printers and grand format printers (collectively referred to as the “Printers”).

- 1.4.1 Gandhi is headquartered in Canada where it carries on business out of leased premises located at 5975 Falbourne Street, Mississauga. The premises consist of a 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.
- 1.4.2 Gandhi manufactures all Printers in Canada at the Mississauga premises. The Printers are either sold directly from Gandhi Canada or are shipped for sale to other related companies around the world. The worldwide entities essentially act as sales and distribution entities for the products of Gandhi Canada. The Gandhi Group and related entities include the following: Gandhi Canada, Gandhi San Antonio, Gandhi Innovations FZCO ("Gandhi Dubai"), Gandhi Innovations BVBA ("Gandhi Belgium"), Gandhi Innovations S.A. de C.V. ("Gandhi Mexico") and SuperWide Connection S.A. de C.V. ("SuperWide Mexico").
- 1.4.3 In addition to the manufacturing and distribution of the Printers, Gandhi Group also provides service, parts and support products (including ink) to purchasers of Printers throughout the world, which provides a continuous cash flow for the organization.

2. Monitor's Activities

2.1 Monitoring Receipts and Disbursements

- 2.1.0 The Monitor continues to review all cash flow and financial reporting prepared by management of the Gandhi Group. The Monitor has reviewed and provides approval for all expenditure

commitments and disbursements totaling \$10,000 or more, as required by the Initial Order. In addition, the Monitor reviews details of daily receipts, purchasing and sales/shipments of Printers.

2.1.1 The Gandi Group's actual consolidated net cash inflow from operations for the period from August 1, 2009 to September 25, 2009 was \$574,000. Below is a table summarizing the budget versus actual cashflow analysis. A summary of the actual receipts and disbursements as compared to the forecasts previously filed by the Monitor is attached at **Appendix F**.

	Projected (CDN\$000's)	Actual (CDN\$000's)	Variance (CDN\$000's)	(%)
Receipts	\$ 7,201	\$ 8,779	\$ 1,578	21.9%
Disbursements	9,175	8,205	970	10.6%
Net change	(1,974)	574	2,548	
Interim distributions	(4,000)	(4,000)	-	
Foreign exchange effect	-	130	130	
Opening cash	13,702	13,702	-	0.0%
Ending cash	\$ 7,728	\$ 10,406	\$ 2,678	34.7%

2.1.2 Actual net cash flow from operations exceeded the forecast by \$2.55 million. The significant items contributing to the variance were as follows:

- (a) Cash transfers from foreign branches, particularly Belgium and Dubai, exceeded the forecast by \$2.53 million;
- (b) Cash receipts from collection of accounts receivable and new sales were lower than forecast by \$954,000;

- (c) Materials purchases were \$459,000 lower than the forecast for the eight week period, largely due to lower sales and machinery production;
- (d) Rent and facilities costs were approximately \$192,000 lower than projected. The difference is attributable to positive timing differences which will be corrected in the future; and
- (e) Tradeshow costs were lower than forecast by \$324,000. The forecast assumed that Gandi San Antonio would bear the financial responsibility for various tradeshows worldwide. However, Gandi's various foreign branches absorbed these costs in their respective geographic area. Accordingly, a positive permanent difference results.

2.1.3 At September 25, 2009, Gandi's estimated consolidated cash balance was approximately \$10.41 million.

2.1.4 In accordance with the Second Extension Order, Gandi issued an interim distribution to SBI in the amount of \$4.00 million on or about 17 August 2009. The interim distribution is subject to a Reimbursement Agreement, a copy of which is attached as **Appendix G**.

2.2 Updated Cash Flow Forecast

2.2.0 Gandi Group, with the assistance of the Monitor, prepared an updated 13-week cash flow forecast (the "October 2009 Forecast") that estimates Gandi Group's financing requirements. A copy of the October 2009 Forecast is attached as **Appendix H**.

2.2.1 The cash flow forecast estimates that Gandi Group will have total receipts of \$11.88 million and total disbursements of \$14.95 million

resulting in a net cash outflow of \$3.07 million for the period of September 26, 2009 to December 25, 2009.

2.2.2 The Gandi Group is forecast to have available liquidity of approximately \$7.34 million, consisting of cash on hand.

2.2.3 The primary changes in assumptions reflected in the October 2009 Forecast include the following:

(a) Sales of new and used Printers have been further reduced to levels more in line with actual sales during the last two months;

(b) Cash receipts from foreign subsidiaries were increased to levels more in line with actual cashflow activity during the last two months;

(c) Various utility costs for operations located in Canada were increased to take into account the upcoming fall and winter seasons.

2.2.4 Based upon the October 2009 Forecast, the Monitor believes that the Gandi Group appears to have sufficient available cash resources during the requested stay period and that an extension of the stay period will permit the Gandi Group to make further progress towards developing a restructuring plan.

2.3 Communications with Key Stakeholders

2.3.0 In accordance with the Initial Order, the Monitor has regularly updated the Key Stakeholders on all relevant issues of Gandi Group's operations, activities, and restructuring efforts. The updates have been in the form of telephone conference calls and weekly written reports.

3. Sale Process

3.1 Summary of Marketing Process

3.1.0 Pursuant to the Sale Process Order, Gandi engaged GCA Savvian to assist in the marketing and sale of the Gandi Companies' business in accordance with the engagement letter dated June 25, 2009.

3.1.1 GCA Savvian developed a recommended sale process in consultation with Gandi management, the Monitor, and the Key Stakeholders. The sale process approved by the Court involved the following steps:

- Execute engagement letter
- Prepare data room/documentary diligence information
- Publish advertisement regarding sale process (if applicable)
- Finalize potential buyers list
- Contact potential buyers and negotiate nondisclosure agreements
- Provide access to documentary diligence information
- Prepare management presentation
- Conduct management presentations/site visits
- Draft term sheet/form of definitive agreement
- Distribute term sheet/form of definitive agreement and Offer instructions
- Respond to additional information requests and questions
- Receive definitive proposals
- Select winning bidder, execute definitive agreement, obtain Court Approval and close the transaction.

- 3.1.2 GCA Savvian finalized a potential buyers list and contacted 33 parties regarding the opportunity.
- 3.1.3 GCA Savvian co-ordinated the compilation of various documentary diligence information. The Monitor provided significant assistance in this regard. The information was posted to an electronic data site. A listing of the documentary diligence information made available to potential purchasers is attached as **Appendix I**. Seven of the potential buyers executed nondisclosure agreements and obtained access to the electronic data site and documentary diligence information.
- 3.1.4 In addition, GCA Savvian assisted Gandi in the preparation of a company presentation. The co-ordination and finalization of the company presentation was somewhat difficult given the fact that certain members of Gandi's management were not involved. As previously advised, certain members of Gandi's management previously expressed an interest in submitting an offer or being involved in a bid for the purchase of the Gandi business. The Monitor was concerned that the involvement of these management members in presentations to potential purchasers could be viewed as compromising the integrity of the sale process. The Monitor therefore did not request their involvement.
- 3.1.5 The absence of certain senior management members created a void in the company presentation. The Monitor therefore turned to Bruce Johnston, a representative of TA, who agreed to assist with presentations to potential purchasers. Bruce Johnston is a director of Gandi Holdings as TA is a minority shareholder of Gandi Holdings. Accordingly, he is very familiar with Gandi.

- 3.1.6 The Company presentation was offered to all interested parties and four potential purchasers requested such presentations. Representatives of GCA Savvian and the Monitor attended all of the presentations.
- 3.1.7 Gandi also hosted site visits for several of the interested parties at its operations in Mississauga, Ontario and San Antonio, Texas. Representatives of GCA Savvian and/or the Monitor participated in each site visit.
- 3.1.8 On or around August 31, 2009, GCA Savvian issued a letter to all of the potential purchasers outlining the process by which they could submit definitive proposals detailing the terms and conditions upon which they would be prepared to purchase the assets of Gandi. The letter set a proposal deadline of 5:00 p.m. EDT on Wednesday September 23, 2009. A sample letter issued to the potential purchasers is attached as **Appendix J**.
- 3.1.9 Prior to September 23, 2009, one or more of the potential purchasers requested an extension of the proposal deadline as they had not been able to complete all of their necessary due diligence investigations. GCA Savvian consulted with the Monitor and representatives of ROI and SBI on this issue, and ultimately agreed to extend the proposal deadline for all potential purchasers to 5:00 p.m. EDT on Wednesday September 30, 2009. All of the potential purchasers were advised of the extension by letters dated and issued on September 18, 2009.

3.2 Submission of Proposals for the Purchase of Gandi Assets

- 3.2.0 By September 30, 2009, GCA Savvian received 2 non-binding letters of intent and 3 offers from potential purchasers for the purchase of the Gandi assets and business.
- 3.2.1 The Monitor, in conjunction with GCA Savvian, is currently reviewing and assessing the proposals. Due to the varying terms and conditions proposed by each of the potential purchasers, the Monitor will require some time to properly assess the proposals, negotiate a definitive agreement of purchase and sale, and seek Court approval of the winning bid.
- 3.2.2 The Monitor therefore supports Gandi's request for a further extension of the stay period to November 23, 2009.

3.3 Monitor's Involvement in the Due Diligence Process

- 3.3.0 The Monitor spent a substantial amount of time assisting Gandi and GCA Savvian with various due diligence requests. GCA Savvian received numerous requests for additional information not originally provided to potential purchasers on their electronic data site. In several cases, Gandi could not fully address various due diligence requests for a number of reasons including:
 - (a) Gandi does not have a sophisticated accounting system; and
 - (b) Gandi's accounting department is not fully staffed and therefore had limited spare capacity to address the additional workload resulting from the due diligence requests.
- 3.3.1 The Monitor, therefore, assisted Gandi in addressing, prioritizing, and compiling information to address various due diligence

requests. Gandhi, GCA Savvian, and the Monitor worked diligently to satisfy these requests as best possible.

- 3.3.2 During the course of the due diligence process, the Monitor was consulted frequently on the appropriateness of various due diligence requests submitted by potential purchasers. In several instances, Gandhi management expressed concerns over releasing certain confidential information to potential purchasers - especially to potential purchasers who are current competitors of Gandhi. Management raised these concerns even though potential purchasers had executed nondisclosure agreements. Therefore, the Monitor assessed the appropriateness of the requests. In some cases, the Monitor agreed with management's position; in others, the Monitor consulted with Gandhi's legal counsel to achieve an acceptable resolution.
- 3.3.3 The Monitor was not able to achieve an acceptable resolution regarding a due diligence request in one particular situation. Certain employees of Gandhi's research and development group refused to meet with representatives of one of the potential purchasers. The Monitor was advised that the employees refused to attend any further meetings "due to their past experiences with [name of potential purchaser deleted] they were not comfortable participating in a further meeting". Their refusal persisted despite directions given to them by Gandhi's management and the Monitor's involvement.
- 3.3.4 The Monitor attended all of the company presentations and most of the site visits to and by potential purchasers.

4. Other

- 4.1.0 The Monitor requests that the Court approve the professional fees and disbursements of BDO Dunwoody Limited totalling \$445,938.21 plus Goods and Services Tax of \$22,296.81, totalling \$468,235.12, for the period from May 8, 2009 to September 18, 2009. An affidavit regarding the Monitor's professional fees and disbursements is attached as **Appendix K**.
- 4.1.1 The Monitor also requests that the Court approve the legal fees of the Monitor's Canadian legal counsel, Chaitons LLP, totalling \$153,868.05 (which amount includes miscellaneous disbursements and Goods and Services Tax) for the period up to August 31, 2009. . An affidavit regarding Chaitons LLP's professional fees and disbursements is attached as **Appendix L**. The Monitor has reviewed the time entries submitted by Chaitons LLP for the period up to August 31, 2009 and finds the work performed and charges incurred to be appropriate and reasonable.
- 4.1.2 The Monitor also requests that the Court approve the legal fees of the Monitor's U.S. legal counsel, Vinson & Elkins LLP, totalling US\$172,930.29 (which amount includes miscellaneous disbursements) for the period up to August 31, 2009. An affidavit regarding Vinson & Elkins LLP's professional fees and disbursements is attached as **Appendix M**. The Monitor has reviewed the time entries submitted by Vinson & Elkins LLP for the period up to August 31, 2009 and finds the work performed and charges incurred to be appropriate and reasonable.

5. Summary and Recommendations


- 5.1.0 Based upon the October 2009 Forecast, the Monitor believes that the Gandhi Group appears to have sufficient available cash resources to maintain operations for the next 7 weeks.
- 5.1.1 The Monitor is satisfied that sufficient progress has been made in the marketing and sale process. The Monitor believes that the proposed extension of the stay period provides sufficient time for the Monitor to properly assess the proposals, negotiate a definitive agreement of purchase and sale, and seek Court approval of the winning bid.
- 5.1.2 The Monitor is of the view that the Gandhi Group is acting in good faith and with due diligence. The Monitor is of the view that no creditor would be materially prejudiced by the requested extension of the stay period to November 23, 2009.
- 5.1.3 The Monitor is advised that the Key Stakeholders do not oppose the Gandhi Group's request for an extension of the stay period to November 23, 2009.
- 5.1.4 The Monitor therefore supports Gandhi's request for a further extension of the stay period to November 23, 2009, and recommends that such request be granted.
- 5.1.5 The Monitor respectfully requests that this Honourable Court approve the Monitor's conduct and activities to date as set out in this Report.

5.1.6 The Monitor requests that the Court approve the professional fees and disbursements of BDO Dunwoody Limited, Chaitons LLP, and Vinson & Elkins LLP as set out in this Report.

All of which is respectfully submitted this 2nd day of October, 2009.

BDO DUNWOODY LIMITED
Monitor in the CCAA proceedings of
Gandi Innovations Limited,
Gandi Innovations Holdings LLC and
Gandi Innovations LLC

Per:



Eugene P. Migus, CA • CIRP
Senior Vice-President