

**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**

**SIXTH REPORT OF THE MONITOR**

**November 17, 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 The Initial Order has been extended from time to time pursuant to Orders of this Court and currently expires on November 23, 2009.

- 1.1.4 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 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 B**.
- 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 C**.
- 1.1.6 On October 7, 2009, Gandhi sought and obtained a further extension of the stay of proceedings to November 23, 2009 (the "Third Extension Order"). The Third Extension Order also required Gandhi to immediately pay all post-filing rents past due under the property lease agreement with Orlando Corporation for Gandhi's Mississauga location as well as pay to the Monitor an amount equal to two months rent under the same property lease agreement in trust (the "Rent Trust Funds"). A copy of the Third Extension Order is attached as **Appendix D**.

## 1.2 Purpose

- 1.2.0 The purpose of this Sixth Report of the Monitor is to provide this Honourable Court with information in respect of the following:
- (a) The activities and results of the marketing and sale process conducted by GCA Savvian Advisors, LLC ("GCA Savvian");

- (b) The activities of the Monitor since the filing of the Fifth Report of the Monitor dated October 2, 2009;
- (c) The consolidated cash position and liquidity of Gandi as at November 6, 2009;
- (d) The Gandi Group's request for an order approving the execution of a Settlement Agreement among Dualite, Inc. and the Gandi Group, among others. A copy of the Settlement Agreement is attached as **Appendix W**;
- (e) The Monitor's request for an order:
  - i) Adding Gandi Innovations Hold Co. ("Gandi Holdco"), a Nova Scotia unlimited liability corporation, and Gandi Special Holdings LLC ("Gandi Special"), a Delaware corporation, as respondents to this CCAA proceeding;
  - ii) Approving the sale of substantially all of the business and assets of the Gandi Group, Gandi Holdco and Gandi 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 (the "Sale Agreement") among the Gandi Group and Agfa (the "Transaction");
  - iii) Authorizing and directing the Monitor to take such steps as are necessary to carry out the terms of the Sale Agreement;

- iv) Vesting title to the purchased assets in and to Agfa upon closing of the Transaction;
- v) Authorizing the Monitor to serve and file a redacted version of the following Appendices to the Sixth Report:
  - i. The report of GCA Savvian summarizing the marketing activities and results, attached as **Confidential Appendix F**;
  - ii. The offers to purchase the Gandi Group assets and the summary of such offers, attached as **Confidential Appendices G through L**;
  - iii. The summary and a full copy of the Sale Agreement attached as **Confidential Appendices M and N**;

The Monitor requests that the unredacted versions of these Appendices be sealed to protect the information as confidential pending the finalization of the Transaction.

- vi) Expanding the powers of the Monitor in the manner proposed herein; and
- vii) Approving the Monitor's activities as set out herein, including, without limitation, the marketing process conducted by the Monitor and GCA Savvian.

### **1.3 Terms of Reference**

1.3.0 The financial and other information contained in this Sixth Report has been obtained from the accounting records of Gandhi and is also based on discussions with and representations made by senior management. The financial 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 entities 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"). A corporate chart depicting the structure of the Gandhi Group and other related entities is attached as **Appendix E**.

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. Sale Process**

### **2.1 Summary of Marketing Process**

2.1.0 The Monitor previously outlined a summary of the marketing process and its progress in the Fifth Report of the Monitor dated October 2, 2009. GCA Savvian has since provided the Monitor with a written summary of its activities, a copy of which is attached as **Confidential Appendix F**.

2.1.1 Pursuant to the Sale Process Order, Gandhi engaged GCA Savvian to assist in the marketing and sale of the Gandhi Group's business in accordance with the engagement letter dated June 25, 2009.

2.1.2 GCA Savvian developed a sale process in consultation with Gandhi's management, the Monitor, and the Key Stakeholders, which was approved by the Court in the Sale Process Order. The sale process 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.

2.1.3 GCA Savvian finalized a potential purchasers list and contacted 32 parties regarding the opportunity.

2.1.4 GCA Savvian, with the assistance of the Monitor, co-ordinated the compilation of various documentary diligence information. The information was posted to an electronic data site. A listing of the documentary diligence information made available to potential purchasers was summarized and provided as Appendix I to the Fifth Report of the Monitor. Seven of the potential purchasers executed nondisclosure agreements and obtained access to the electronic data site and documentary diligence information.

2.1.5 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

expressed an interest in submitting an offer or being involved in a bid for the purchase of the Gandhi 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.

2.1.6 The absence of certain senior management members created a void in the company presentation. As previously reported to the Court, the Monitor turned to Bruce Johnston, a representative of TA, who agreed to assist with presentations to potential purchasers. Bruce Johnston is a director of Gandhi Holdings as TA is a minority shareholder of Gandhi Holdings, and he is very familiar with the Gandhi Group's business and affairs.

2.1.7 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.

2.1.8 Gandhi 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.

2.1.9 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 Gandhi. The

letter set a proposal deadline of 5:00 p.m. EST on Wednesday September 23, 2009.

2.1.10 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. EST on Wednesday September 30, 2009. All of the potential purchasers were advised of the extension by letters dated and issued on September 18, 2009.

## **2.2 Submission of Proposals for the Purchase of Gandi Assets**

2.2.0 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.

2.2.1 The Monitor, in conjunction with GCA Savvian, reviewed and assessed the proposals. As all of the proposals varied from the draft agreement of purchase and sale provided by the Monitor, the Monitor requested that GCA Savvian seek clarification from most of the interested parties on various terms and conditions of their respective offers.

2.2.2 One of the prospective purchasers was ROI which submitted a protective offer. ROI quickly concluded that it was not the leading bidder and therefore made the decision to withdraw from the bidding process. ROI's offer is attached as **Confidential Appendix G**.

- 2.2.3 As a result of the discussions with GCA Savvian, two of the four remaining prospective purchasers submitted revised offers. Agfa submitted a revised offer on October 14, 2009. Another prospective purchaser submitted a revised offer on October 18, 2009. The revised offers are attached as **Confidential Appendices H and I**.
- 2.2.4 The fourth prospective purchaser was TA which also submitted a protective offer. TA subsequently withdrew from the bidding process on October 16, 2009. Their offer is attached as **Confidential Appendix J**.
- 2.2.5 The Monitor discussed the terms of the original offers as well as the revised offers with SBI, ROI, and their legal counsel during the course of the marketing process who advised the Monitor that they viewed the revised offer submitted by Agfa as the highest and best offer and therefore supported the Monitor's decision to deal with their offer.
- 2.2.6 After TA withdrew from the bidding process, the Monitor shared the results of the bidding process with TA and consulted with TA on the remaining offers. The Monitor sought TA's advice given that TA's claim represents approximately 53 percent of the total known unsecured liabilities of the Gandi Group. TA also viewed the revised offer submitted by Agfa as the highest and best offer and therefore also recommended that the Monitor deal with Agfa's offer.
- 2.2.7 The Monitor and GCA Savvian also viewed the offer submitted by Agfa as the highest and best offer. Accordingly, the Monitor decided to enter into exclusive negotiations with Agfa regarding its offer.

- 2.2.8 Subsequent to this decision, the fifth prospective purchaser also submitted a revised offer on October 19, 2009. Their revised offer is attached as **Confidential Appendix K**.
- 2.2.9 A comparison of the key terms of the two withdrawn offers as well as the three revised offers is summarized at **Confidential Appendix L**.
- 2.2.10 The Monitor requests that the various offers be sealed to protect the information as confidential pending the finalization of the Transaction.

### **2.3 Negotiations with Agfa**

- 2.3.0 On October 19, 2009, the Monitor, with the assistance of GCA Savvian, commenced exclusive negotiations with Agfa on the agreement of purchase and sale submitted with its revised offer.
- 2.3.1 The Monitor agreed to provide Agfa with additional time to conduct further due diligence in order to finalize the structure of the Transaction. The Monitor arranged for Agfa and its advisors to have access to the premises and books and records of Gandi Dubai, Gandi Belgium and Gandi Mexico (collectively, the "Gandi Foreign Subsidiaries") so that Agfa could conduct additional due diligence reviews. The Monitor also assisted in obtaining further documentation on various issues with respect to environmental matters, insurance, intellectual property, accounts receivable, real property leases, material contracts, licenses and permits, pension plans, and labour relations. Agfa conducted its due diligence

review of the Gandi Foreign Subsidiaries over the period October 27, 2009 to November 5, 2009.

2.3.2 The Monitor and Agfa resumed negotiations on November 11, 2009. Agfa informed the Monitor that it was prepared to proceed with its offer on the following basis:

(a) Agfa's offer would now include the purchase of all of the shares of the Gandi Foreign Subsidiaries owned by their majority shareholder, Gandi Holdings (the initial offer contemplated a purchase of assets only). The purchase of the shares of the Gandi Foreign Subsidiaries requires an adjustment to the ultimate purchase price equal to the amount of liabilities of the Gandi Foreign Subsidiaries on the respective financial statements as of the closing date. Agfa's review identified several potential contingent liabilities which are not currently recorded on the books and records of the Gandi Foreign Subsidiaries. Agfa requires some additional protection for any contingent liabilities existing at the closing date with respect to the Gandi Foreign Subsidiaries which may arise during the 2-year period following the closing of the Transaction;

(b) Agfa's offer also now includes the purchase of the remaining 1 shares of each of the Gandi Foreign Subsidiaries which are owned by a minority shareholder, Gandi Special, a wholly-owned subsidiary of Gandi Holdings. Gandi Special is not currently subject to the CCAA proceeding;

(c) Agfa's offer would also include the accounts receivable and inventory of small branch operations in South Africa, the Middle

East (other than Dubai), and India which are currently owned by Gandhi Holdco, a wholly-owned subsidiary of Gandhi Canada. Gandhi Holdco, however, is also not currently subject to the CCAA proceeding; and

(d) Agfa had sufficiently satisfied itself with most of the other issues associated with the representations and warranties and was therefore prepared to delete the requirement for such representations and warranties from the Monitor in favour of Agfa.

## 2.4 Monitor's Recommendations on the Sale Agreement

2.4.0 After lengthy negotiations with Agfa, the Sale Agreement was finalized and executed by the parties on November 15, 2009, subject to approval of this Honourable Court and the U.S. Bankruptcy Court. The Monitor expects to receive the initial deposit under the Sale Agreement totalling \$2.50 million on November 16, 2009. A summary of the key terms of the Sale Agreement as well as a copy of the Sale Agreement are attached as **Confidential Appendices M and N**. The Monitor requests that these documents be sealed pending the completion of the Transaction as they contain financially sensitive information that may impair the Monitor's ability to close the Transaction should such details become publicly available. The disclosure would also impair the Monitor's ability to solicit other offers should the Transaction not close for any reason.

2.4.1 As discussed above, the Sale Agreement contemplates Agfa purchasing substantially all of the business and assets of the Gandhi Group, as well as certain assets of Gandhi Holdco and Gandhi Special



which are currently not respondents in the CCAA proceeding. In particular, the Sale Agreement contemplates Agfa Inc. purchasing all of the Canadian purchased assets (other than intercompany accounts receivable), while Agfa Corporation will purchase all of the U.S. purchased assets (including intercompany accounts receivable).

2.4.2 The Sale Agreement also contemplates, among other things, each of the following being satisfied prior to closing of the Transaction:

- (a) A *Competition Act* (Canada) clearance certificate shall be been issued, if applicable;
- (b) All required approvals and authorization shall have been obtained pursuant to the *Hart-Scott-Rodino Antitrust Improvements Act of 1976* (U.S.);
- (c) Compliance with merger control laws in jurisdictions other than Canada and the U.S.;
- (d) Retention of a minimum threshold of key employees;
- (e) The shares of the Gandi Foreign Subsidiaries shall comprise part of the purchased assets, or Gandi Holdings shall have, or shall have caused, Gandi Special to have executed documents of transfer in favour of Agfa or its designee for the shares held by Gandi Special in the Gandi Foreign Subsidiaries, and such documents shall have been delivered to Agfa on closing of the Transaction;

- (f) The issuance and entering of approval and vesting order(s) by this Court and by the U.S. Bankruptcy Court approving the Sale Agreement and vesting title to the purchased assets in Agfa; and
- (g) The Transaction is to be completed by no later than February 28, 2010.

2.4.3 The Monitor recommends the approval of the Sale Agreement for among the following reasons:

- (a) Agfa submitted the highest and best offer. The estimated proceeds from the Transaction are sufficient to fully pay out the secured claims of SBI and ROI, as well as provide a significant recovery for unsecured creditors;
- (b) The Agfa offer is not conditional on further due diligence or financing. Agfa has invested a significant amount of time and cost in conducting its due diligence review and, in the opinion of the Monitor, Agfa is motivated to complete the Transaction;
- (c) Although Agfa's offer is conditional upon a specified number of key employees accepting employment offers from Agfa, to the best of the Monitor's knowledge, the employees of the Gandi Group are largely supportive of Agfa's purchase of the Gandi Group's business and assets and the Monitor believes that this condition can be satisfied prior to closing;
- (d) Agfa Corporation and Agfa Inc. are wholly-owned subsidiaries of Agfa-Gevaert NV. Agfa-Gevaert NV is one of the world's leading companies in imaging and information technology. Agfa-Gevaert NV is headquartered in Mortsel, Belgium. It is

present in 40 countries and has agents in another 100 countries around the world. Agfa-Gevaert NV achieved a turnover of over 3 billion euros in 2008. The Monitor has reviewed the financial statements of Agfa Corporation and Agfa Inc. as at September 30, 2009 and is of the view that Agfa's financial ability to complete the Transaction is undoubted;

(e) The Monitor has also considered an orderly liquidation of Gandi's assets in assessing Agfa's offer. The Monitor believes that Agfa's offer provides a vastly superior recovery than that which could be expected by way of an orderly liquidation for the following reasons:

- (i) The collectability of accounts receivable is highly dependant upon the ability to provide Key Codes needed for the operation of leased printers, as well as the continuation of service and warranty obligations;
- (ii) The inventory is highly specialized and likely has value to a special purpose user only;
- (iii) A significant portion of the value of the Gandi Group resides in the various foreign subsidiaries which are not directly subject to the CCAA proceeding. The larger foreign subsidiaries include Gandi Dubai, Gandi Belgium, and Gandi Mexico. The liquidation of the foreign subsidiaries would likely be a complicated and expensive matter given the various foreign jurisdictions involved.

- 2.4.4 Pursuant to the Sale Agreement, the Monitor is required to deliver to Agfa on or before the closing date Court orders vesting title to the purchased assets in and to Agfa free and clear of all liens and encumbrances, other than permitted encumbrances.
- 2.4.5 The Monitor has caused searches to be conducted against the Gandi Canada and any predecessor names under the personal property security registration system of Ontario and Nova Scotia. Attached as **Appendix O** to this Sixth Report, are copies of the PPSR Certified Search Result Reports (Ontario) and the PPSR Verbal Search Results Report (Ontario) for Gandi Canada current as of May 18, 2009 and November 15, 2009, respectively. The PPSR Verbal Search Results (Ontario) evidence no registrations since the date of the PPSR Certified Search Results (Ontario). Attached as **Appendix P** to this Sixth Report, are copies of the PPSR Search Result Reports (Nova Scotia) for Gandi Canada current as of November 16, 2009.
- 2.4.6 The Monitor has also caused searches to be conducted against Gandi Holdings in the personal property security registration system of Delaware and against Gandi San Antonio under the personal property security registration system of Texas. Attached as **Appendix Q** to this Sixth Report, is a copy of the UCC Search Result Report (Delaware) for Gandi Holdings current as of November 2, 2009. Attached as **Appendix R** to this Sixth Report, is a copy of the UCC Search Result Report (Texas) for Gandi San Antonio current as of July 6, 2009.
- 2.4.7 The Monitor has also caused searches to be conducted against Gandi Holdco under the personal property security registration system of

Nova Scotia and against Gandhi Special under the personal property security registration system of Delaware. Attached as **Appendix S** to this Sixth Report, is a copy of the PPSR Search Result Report (Nova Scotia) for Gandhi Holdco current as of November 12, 2009. Attached as **Appendix T** to this Sixth Report, is a copy of the UCC Search Result Report (Delaware) for Gandhi Special current as of November 2, 2009.

2.4.8 The Monitor has also caused searches to be conducted under the *Bank Act* (Canada) security registration system against Gandhi Canada in Nova Scotia and Ontario, and against Gandhi Holdco in Nova Scotia. Attached as **Appendix U** to this Sixth Report, are copies of the Confirmation Letters for the Gandhi Group current as of November 16, 2009 and for Gandhi Holdco current as of November 12, 2009.

2.4.9 Notice of this motion has or will be given to the creditors whose encumbrances are to be discharged against the purchased assets through the vesting order.

## **2.5 Recommendation to Include Gandhi Holdco and Gandhi Special as Respondents to the CCAA Proceeding**

2.5.0 As set out above, the Sale Agreement contemplates the purchase by Agfa of the accounts receivable and inventory owned by Gandhi Holdco. Those assets will only be included in the purchased assets if Gandhi Holdco becomes a party to the Sale Agreement pursuant to an order of this Court which adds Gandhi Holdco as a respondent in the CCAA proceeding.

- 2.5.1 Agfa is not prepared to acquire the shares of Gandhi Holdco as it cannot sufficiently satisfy itself on the existence, accuracy, or completeness of Gandhi Holdco's liabilities. Gandhi Holdco has no formal accounting system and does not maintain any formal books and records. Financial statements for Gandhi Holdco are mostly prepared for income tax purposes only. Agfa is not prepared to take on any risk for any potential undisclosed liabilities of Gandhi Holdco
- 2.5.2 Attached, as **Appendix V**, are the internally prepared financial statements of Gandhi Holdco as at December 31, 2008. The financial statements show that Gandhi Holdco is insolvent as its liabilities exceed its assets by approximately \$1.31 million. The majority of Gandhi Holdco's liabilities consist of intercompany liabilities to Gandhi Dubai, Gandhi Canada and/or Gandhi San Antonio for equipment, parts, and ink purchases. Gandhi Holdco will not be able to carry on the operations of its foreign branches if it is excluded from the proposed purchase and sale transaction.
- 2.5.3 Accordingly, the Monitor requests an order of this Honourable Court adding Gandhi Holdco as a respondent in this CCAA proceeding in order to facilitate the sale of its assets to Agfa.
- 2.5.4 As set out above, it is a condition of the Sale Agreement that the shares of the Gandhi Foreign Subsidiaries held by Gandhi Special at the time of closing are included in the purchased assets.
- 2.5.5 Agfa is not prepared to acquire the shares of Gandhi Special as it cannot sufficiently satisfy itself on the existence, accuracy, or completeness of Gandhi Special's liabilities. Like Gandhi Holdco, Gandhi Special has no formal accounting system and does not

maintain any formal books and records. Financial statements for Gandhi Special are mostly prepared for income tax purposes only. Agfa is not prepared to take on any risk for any potential undisclosed liabilities of Gandhi Special.

2.5.6 The Monitor requested Gandhi management to provide the currently available financial statements for Gandhi Special. Although the Monitor has not yet been provided with such financial statements, Gandhi management has advised that Gandhi Special is strictly a holding company whose sole purpose is to hold the minority ownership interests in the Gandhi Foreign Subsidiaries.

2.5.7 Accordingly, the Monitor requests an order of this Honourable Court adding Gandhi Special as a respondent in this CCAA proceeding to facilitate the sale to Agfa of the shares of the Gandhi Foreign Subsidiaries and to prevent the Sale Agreement from being terminated due to non-compliance with this closing condition. The Monitor intends to request the U.S. Bankruptcy Court to recognize the addition of Gandhi Special as a respondent in the CCAA proceeding, to approve the sale of its minority interest in the Gandhi Foreign Subsidiaries to Agfa and to vest title of same in Agfa.

### **3. Settlement with Dualite, Inc.**

3.1.0 During the course of the CCAA proceeding, certain members of Gandhi management were involved in a legal action against Gandhi Canada, Gandhi San Antonio, Hary Gandy, James Gandy, and a number of related entities which are not members or subsidiaries of the Gandhi Group. The litigation was initiated by Dualite, Inc., a U.S.

corporation, in the District Court of Bexar County, in the State of Texas and stemmed from a default judgment which Dualite, Inc. obtained against a Gandhi predecessor company, Signtech, for US\$10 million. Dualite, Inc. alleged that a fraudulent transfer of property owned by Signtech occurred which may be traced into or otherwise involve Gandhi Canada and/or Gandhi San Antonio.

- 3.1.1 An appeal of the default judgment against Signtech was unsuccessful and the action was scheduled to proceed to trial during November 2009 against all defendants, other than Gandhi Canada and Gandhi San Antonio due to the stay of proceedings.
- 3.1.2 The other named defendants recently negotiated a settlement with Dualite, Inc. A copy of the Settlement Agreement is attached as **Appendix W**. The settlement amount has already been paid to Dualite, Inc. by the other named defendants. The terms of the Settlement Agreement require the parties to the Settlement Agreement (including Gandhi Canada and Gandhi San Antonio) to provide a release. The Settlement Agreement is subject to approval of this Court. Accordingly, Gandhi Canada and Gandhi San Antonio seek the Court's authorization to execute the proposed Settlement Agreement with Dualite, Inc.
- 3.1.3 As a result of the settlement, Dualite, Inc. will not have any claim against the Gandhi Group. The Monitor views the settlement as favourable to the stakeholders of the Gandhi Group and therefore supports the Gandhi Group's request for an order of this Honourable Court authorizing Gandhi Canada and Gandhi San Antonio to enter into the Settlement Agreement with Dualite, Inc.



## **4. Monitor's Activities**

### **4.1 Receipt of Rent Trust Funds**

4.1.0 The Third Extension Order issued on October 7, 2009 required Gandi to immediately pay the Rent Trust Funds (as that term is defined therein) to the Monitor.

4.1.1 The Monitor made several requests of Gandi's management and their legal counsel, for payment of the Rent Trust Funds. On October 23, 2009, the Monitor held a conference call with Gandi management and their legal counsel to resolve several issues, including that of payment of the Rent Trust Funds. During that conference call, management advised they had not previously issued payment of the Rent Trust Funds as they did not know the specific dollar amount required for payment. The Monitor subsequently advised that the payment should total \$193,667. On October 27, 2009, the Monitor received the required payment of \$193,667 and deposited the amount in a separate trust account.

### **4.2 Monitoring Receipts and Disbursements**

4.2.0 The Monitor continues to review all cash flow and financial reporting prepared by management of the Gandi Group. The Monitor has reviewed and provides approval for all expenditure commitments and disbursements totalling \$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.

4.2.1 The Gandi Group's actual consolidated net cash inflow for the period from September 26, 2009 to November 6, 2009 was \$501,000.

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 X**.

	Projected (CDN\$000's)	Actual (CDN\$000's)	Variance (CDN\$000's)	(%)
Receipts	\$ 5,379	\$ 5,932	\$ 553	10.3%
Disbursements	7,207	5,431	1,776	24.6%
Net change	(1,828)	501	2,329	
Foreign exchange effect	-	(148)	(148)	
Opening cash	10,406	10,406	-	
Ending cash	\$ 8,578	\$ 10,759	\$ 2,181	25.4%

4.2.2 Actual net cash flow exceeded the forecast by \$2.33 million. The significant items contributing to the variance were as follows:

- (a) Cash transfers from foreign branches exceeded the forecast by \$61,000;
- (b) Cash receipts from collection of accounts receivable and new sales exceeded forecast by \$492,000. Customers have improved payments over the recent period. In addition, sales order activity has also increased. Some of the increase may be attributable to market rumours regarding the proposed purchase/sale of the Gandi business and the presumed continuation of the business going forward;
- (c) Materials purchases were lower than forecast by \$836,000. Various materials purchase costs totalling approximately \$402,000 were approved for payment by the Monitor during the period which were outstanding as of November 6, 2009;

(d) Tradeshow costs were lower than forecast by \$175,000. Gandi still expects to attend all scheduled shows and will pay the tradeshow costs as they become due. The forecast assumed that tradeshow expenses are always incurred by Gandi Canada or Gandi San Antonio. In numerous cases, however, the various Gandi foreign subsidiaries bore financial responsibility for tradeshow costs within their geographic areas; and

(e) Restructuring costs were lower than forecast by \$366,000. Actual payments issued during the period totalled only \$14,000. Various professional invoices totalling \$262,380 and US\$58,658 were submitted to Gandi management for payment before and during the reporting period which remain outstanding.

4.2.3 At November 6, 2009, Gandi's estimated consolidated cash balance was approximately \$10.76 million. This amount includes the Rent Trust Funds currently held by the Monitor.

4.2.4 However, as noted above, outstanding payments to trade suppliers totalling approximately \$402,000 were not paid until November 16, 2009, while payments for professional fees totalling approximately \$325,000 remain outstanding. At the same time, the signing officers have not responded to the Monitor's repeated requests for payment of the outstanding professional fees of the Monitor and its counsel and other professionals employed in this CCAA restructuring.

4.2.5 The remaining available funds after deducting these outstanding liabilities are approximately \$9.98 million.

### **4.3 Communications with Key Stakeholders**

4.3.0 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.

## **5. Proposed Expanded Powers of the Monitor**

### **5.1 Need for Expanded Powers**

Throughout the CCAA proceeding, several key management members and other employees have demonstrated their loyalty to the Gandy family. The loyalty created certain challenges for the Monitor, particularly during the due diligence process with prospective purchasers.

5.1.0 The Gandy family has maintained periodic communications with all Gandi employees, providing them assurance that the restructuring of the Gandi Group was beneficial and necessary, and also indicating the Gandy family desire to retain ownership of the Gandi business.

5.1.1 With the Monitor's acceptance of the Agfa offer, it is clear that the Gandy family will not retain ownership of the Gandi business. The Monitor has serious concerns that certain employees may take actions which could potentially affect the going-concern value of the Gandi Group business or cause difficulties for the Monitor in closing the Transaction. These concerns stem from the past actions of certain employees which have caused unnecessary delays and difficulties for the Monitor during the CCAA proceeding, as well as for GCA

Savvian during the marketing and sale process. The most notable examples include the following:

- (a) As noted in the Fifth Report of the Monitor, 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;
- (b) Gandhi management did not comply with the terms of the Initial Order requiring the payment of rent under real property leases twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). As a result, Gandhi Canada's landlord, Orlando Corporation, sought relief from the Court. The Third Extension Order included a provision which required Gandhi to immediately pay all post-filing rents past due under the property lease agreement with Orlando Corporation as well as pay to the Monitor an amount in trust equal to two months rent under Orlando Corporation's property lease agreement with Orlando Corporation. As noted in this Sixth Report, Gandhi management took approximately 20 days to comply with the requirement under the Third Extension Order to issue the payment of the Rent Trust Funds to the Monitor; and
- (c) As noted in this Sixth Report, Gandhi's signing officers delayed the release of various cheques to suppliers. At the same time, the

signing officers have not responded to the Monitor's numerous requests for payment of the outstanding professional fees of the Monitor and its legal counsel and other professionals employed in this CCAA restructuring.

5.1.2 Under the terms of the Sale Agreement, the Gandi Group is required to "use commercially reasonable efforts to conduct the Business in substantially the same manner as conducted as of the date of this Agreement and only in the ordinary course".

5.1.3 The Monitor believes it is necessary and appropriate in the circumstances to seek additional powers for the Monitor to ensure that the business is conducted in a commercially reasonable manner and that the Transaction is completed without further difficulties.

## **5.2 Proposed Expanded Powers of the Monitor**

5.2.0 The Monitor proposes that it be granted the following additional powers in addition to the powers set out in the Initial Order (capitalized terms, unless otherwise defined, have the meaning as ascribed in the Initial Order):

- (a) The right to terminate the employment of employees of the Gandi Group or temporarily lay off such employees, on behalf of the Gandi Group, as the Monitor deems appropriate; and
- (b) Control of the receipts and disbursements of the Gandi Group and the authority to be named as the sole signing authority on each of the bank accounts operated by the Gandi Group.

## **6. Summary and Recommendations**

- 6.1.0 The Monitor recommends to this Honourable Court that Gandhi Holdco and Gandhi Special be added as respondents in this CCAA proceeding. The addition of these entities to the CCAA proceeding will provide the Monitor with the ability to sell the assets of Gandhi Holdco and the shares of the Gandhi Foreign Subsidiaries owned by Gandhi Special, which is a condition to the closing of the Transaction
- 6.1.1 The Monitor is satisfied that the sale and marketing process sufficiently exposed for sale the business and assets of the Gandhi Group to the marketplace. Furthermore, the Monitor is of the view that the Sale Agreement with Agfa constitutes the highest and best offer for the business and assets of the Gandhi Group. The Sale Agreement is supported by the Key Stakeholders. Accordingly, the Monitor respectfully recommends that this Honourable Court i) approve the Sale Agreement and authorize and direct the Monitor to take such steps as are necessary to complete the Transaction on behalf of the Gandhi Group, Gandhi Holdco and Gandhi Special; and iii) issue an order vesting title in the purchased assets in Agfa free and clear of all liens and encumbrances, other than permitted encumbrances.
- 6.1.2 The Monitor supports the Gandhi Group's request for an order of this Honourable Court authorizing Gandhi Canada and Gandhi San Antonio to enter into the Settlement Agreement with Dualite, Inc.
- 6.1.3 The Monitor believes that the Gandhi Group appears to have sufficient available cash resources to maintain operations for the next 60 days while the Transaction is completed. The Monitor is of the

view that the Gandhi Group is acting in good faith and with due diligence. Based on the information currently available, the Monitor believes that no creditor would be materially prejudiced by the requested extension of the stay period to January 22, 2010. The Monitor is advised that the Key Stakeholders do not oppose the Gandhi Group's request for an extension of the stay period to January 22, 2010. The Monitor therefore supports Gandhi's request for a further extension of the stay period to January 22, 2010, and recommends that such request be granted.

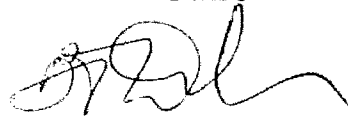
6.1.4 The Monitor requests that this Honourable Court grant an order expanding the powers of the Monitor as described in this Sixth Report.

6.1.5 The Monitor respectfully requests that this Honourable Court approve the Monitor's conduct and activities to date as set out in this Sixth Report.

All of which is respectfully submitted this 17<sup>th</sup> day of November, 2009.

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

Per:



Blair F. Davidson, CA • CIRP  
President