



COURT FILE NUMBER 2001-05630
 COURT COURT OF QUEEN'S BENCH OF ALBERTA
 JUDICIAL CENTRE CALGARY

APPLICANTS IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DOMINION DIAMOND MINES ULC, DOMINION DIAMOND DELAWARE COMPANY LLC, DOMINION DIAMOND CANADA ULC, WASHINGTON DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC, AND DOMINION FINCO INC.

DOCUMENT **ORDER (Approval of Monetization Process)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
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DATE ON WHICH ORDER WAS PRONOUNCED: November 4, 2020

NAME OF JUDGE WHO MADE THIS ORDER: Justice K.M. Eidsvik

LOCATION OF HEARING: Calgary, Alberta

UPON the application (the "**Application**") of Diavik Diamond Mines (2012) Inc. ("**DDMI**"); **AND UPON** having read the Affidavit of Kristal Kaye, sworn on April 21, 2020, the Affidavit of Thomas Croese, sworn on April 30, 2020, the Affidavit of Kristal Kaye, sworn May 6, 2020, the Supplemental Affidavit of Thomas Croese, sworn on May 7, 2020, the Affidavit of Thomas Croese, sworn on May 28, 2020, the Affidavit of Thomas Croese, sworn on June 16, 2020, the Affidavit of Kristal Kaye, sworn on September 18, 2020, the Affidavit of Frederick Vescio, sworn on October 7, 2020, the Affidavit of Thomas Croese, sworn on October 19, 2020, the Affidavit of Brendan Bell, sworn October 23, 2020, the Affidavit of Kristal Kaye, sworn on October 28, 2020, the Affidavit of Thomas Croese, sworn on October 29, 2020 and the Affidavit of Kristal Kaye,

sworn on October 30, 2020; **AND UPON** having read the Bench Brief of DDMI, dated October 30, 2020, the Response Bench Brief of Dominion Diamond Mines ULC ("**Dominion Diamond**"), dated October 28, 2020, the Response Bench Brief of Credit Suisse AG, Cayman Islands Branch, as agent for the first secured lenders, dated October 28, 2020 and the Reply Bench Brief of DDMI, dated October 29, 2020; **AND UPON** having read the Fifth Report of FTI Consulting Canada Inc., in its capacity as court-appointed monitor of Dominion Diamond and certain of its affiliates (the "**Monitor**"), dated June 18, 2020, the Sixth Report of the Monitor, dated September 22, 2020, the Seventh Report of the Monitor, dated October 27, 2020 and the Eighth Report of the Monitor, dated October 29, 2020; **AND UPON** reviewing the Transcript of Proceedings from the hearing before this Honourable Court on June 19, 2020; **AND UPON** having read the Affidavit of Service of Katie Doran (the "**Service Affidavit**"); **AND UPON** hearing counsel for DDMI and any other counsel present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the Application and the supporting materials is abridged, the Application is properly returnable today, service of the Application and the supporting materials on the service list created and maintained as part of the within proceedings and as set out as in the Service Affidavit (the "**Service List**"), in the manner described in the Service Affidavit, is good and sufficient, and no other persons, other than those listed on the Service List, are entitled to service of the Application or the supporting materials.
2. The monetization process in the form attached as Schedule "**A**" hereto (the "**Monetization Process**") be and is hereby approved. DDMI is authorized and empowered to implement the Monetization Process and take all steps and actions necessary to complete the Monetization Process in accordance with the terms thereof.
3. Service of this Order shall be deemed good and sufficient by serving the same in accordance with the procedures in the CaseLines Service Order granted May 29, 2020 in these proceedings.



J.C.C.Q.B.A.

**SCHEDULE "A" TO THE ORDER (MONETIZATION PROCESS)
MONETIZATION PROCESS**

1. Dominion Diamond Mines ULC ("**Dominion**") and Diavik Diamond Mines (2012) Inc. ("**DDMI**") are successors in interest to the Diavik Joint Venture Agreement dated as of March 23, 1995 between Kennecott Canada Inc. and Aber Resources Limited, as subsequently amended (collectively, the "**JVA**").
2. On April 22, 2020, Dominion sought and obtained protection from its creditors pursuant to an order issued by the Court of Queen's Bench of Alberta (the "**Court**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") in Court File No. 2001-05630 (the "**CCAA Proceedings**"). FTI Consulting Canada Inc. has been appointed as the monitor of Dominion pursuant to the CCAA (the "**Monitor**").
3. This Monetization Process shall govern the disposition of Dominion's share of production from the Diavik Diamond Mine located in the North Slave Region of the Northwest Territories, Canada (the "**Diavik Mine**") that is not otherwise identified in paragraph 2 of the Order (Delivery of Diamonds) issued in the CCAA Proceedings on May 8, 2020 (the "**DDMI Collateral**"), subject to any further Order in the CCAA Proceedings. In order to optimize the value of the DDMI Collateral for all stakeholders, the DDMI Collateral must be disposed of in a commercially reasonable manner, in a fair and transparent process and, recognizing that the DDMI production from the Diavik Mine (the "**DDMI Production**") may already be subject to agreement for sale, is intended to be treated in a manner no less favourable than the DDMI Production wherever possible.
4. DDMI is hereby empowered and authorized, but not obligated, to act at once in respect of the DDMI Collateral, and is hereby expressly empowered and authorized to do any of the following, at all times acting in a commercially reasonable manner and in accordance with the procedure set out in Schedule "A", where DDMI considers it reasonably necessary or desirable:
 - (a) transport the DDMI Collateral from the production sorting facility in Yellowknife, Northwest Territories (the "**PSF**") to Antwerp, Belgium;
 - (b) engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons including, without limitation, persons who are affiliates of DDMI, from time to time and on whatever basis, including on

a temporary basis, on terms and conditions that are commercially reasonable and consistent with standard processes and procedures of DDMI, or persons who are affiliates of DDMI, to assist with the exercise of DDMI's powers and duties in respect of the DDMI Collateral;

- (c) clean, sort, value and market the DDMI Collateral to and with the assistance of any person;
 - (d) sell, transfer and convey the DDMI Collateral to any person in accordance with the procedure set out in Schedule "A" hereto;
 - (e) receive and collect on Dominion's behalf all monies and accounts now owed or hereafter owing to Dominion in respect of the DDMI Collateral and to exercise all remedies of Dominion in collecting such monies, including, without limitation, to enforce any security held by Dominion in respect of the DDMI Collateral;
 - (f) disburse all monies and accounts that are received and collected in respect of the DDMI Collateral in accordance with the priorities set forth in paragraph 8 of this Monetization Process;
 - (g) take any steps reasonably incidental to carrying out the procedure set out in Schedule "A";
 - (h) and in each case where DDMI takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other persons, including Dominion, and without interference from any other persons.
5. Upon the completion of a disposition of all or any portion of the DDMI Collateral by DDMI (each, a "**Sale**"), Dominion's and DDMI's interest in the DDMI Collateral that is subject to such Sale shall vest absolutely in the applicable purchaser, free and clear of and from any and all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts, reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise including, without limiting the generality of the foregoing:

- (a) any encumbrances or charges created by any order in the CCAA proceeding involving Dominion; and;
 - (b) any charges, security interests or claims evidenced by registrations pursuant to any personal property registry system in a Canadian jurisdiction.
6. DDMI shall not be acting as, and shall not be deemed to act as, Dominion's agent as a result of carrying out the provisions of this Monetization Process and shall not become liable for or obligated to perform any liability, indebtedness or obligation of Dominion as a result of carrying out the provisions of this Monetization Process, completing any Sales or distributing any proceeds resulting therefrom. All Sales shall be permitted to be completed in one or more transactions, in DDMI's sole and absolute discretion, including without limitation, with respect to the timing, process, and manner of such Sale provided the Sale complies with the provisions of Schedule "A". Other than liabilities that DDMI expressly agrees to incur in writing in respect of any Sale, DDMI shall have no liability of any kind to any person with respect to any Sale including, without limitation, the timing, process, and manner of such Sale, and no person shall sue or otherwise take any action against DDMI with respect to such Sale except for:
- (a) claims that DDMI expressly agrees to incur in writing in respect of any Sale;
 - (b) claims that DDMI did not comply with the provisions of Schedule "A";
 - (c) claims that DDMI did not act in good faith and in a commercially reasonable manner;
 - (d) claims of Sandstorm Gold Ltd. under the Repadre Royalty Agreement dated September 30, 2003; or
 - (e) claims of Christopher Jennings under the Jennings Royalty Agreement dated September 30, 2003 between Diavik Diamond Mines Inc., Aber Diamond Mines Ltd., and Christopher Jennings;

provided, however, that nothing contained herein shall affect the application before the Supreme Court of British Columbia *Dominion Diamond Mines ULC v Diavik Diamond Mines (2012) Inc.* No. S206419, nor any defences of DDMI.

7. For certainty, Dominion shall have and shall continue to have all right, title and interest in the DDMI Collateral throughout the sales process and until completion of a Sale and the proceeds of a Sale shall be treated for all tax and accounting purposes as if they were received by Dominion and distributed by Dominion in accordance with paragraph 8 of this Monetization Process.
8. The proceeds resulting from any Sale shall be distributed by DDMI promptly after receipt thereof in accordance with the following:
 - (a) first, and without prejudice to the rights of any claimants to make any potential arguments to the Court as to entitlement, towards all taxes or royalties applicable to DDMI Collateral that rank in priority to the security provided for in Article 9.4 of the JVA or which the Court otherwise determines ought to be paid from the proceeds;
 - (b) second, to all reasonable and documented fees, costs and expenses incurred by or on behalf of DDMI in the implementation of the Realization Process and the completion of the Sale including, without limitation, a fee equal to one per cent (1%) of the gross value of any Sale payable to DDMI in relation to handling, sorting, selling and collecting proceeds;
 - (c) third, towards any amounts incurred on the Administration Charge and the Directors' Charge (as such terms are defined in the Second Amended and Restated Initial Order in the CCAA proceedings granted June 19, 2020, as may be amended (the "**SARIO**")), subject to an allocation of such amounts as agreed to by each of the Monitor, DDMI, Dominion, the Administrative Agent and the Indenture Trustee (as defined below) or as otherwise ordered by the Court;
 - (d) fourth, to DDMI, in satisfaction of outstanding Cover Payments (as such term is defined in the JVA) and interest thereon made by DDMI pursuant to Article 9.4 of the JVA including reasonable legal fees and all other reasonable costs and expenses incurred by DDMI in collecting payment of such indebtedness and enforcing such security interest;

- (e) fifth, to Dominion, to be held in a segregated trust account at a chartered Canadian bank and distributed in accordance with a distribution order or other order of the Court.
9. Subject to DDMI complying with any order in the CCAA proceedings, nothing in this Monetization Process shall prevent DDMI from exercising all such other rights and remedies available to it under applicable law or the right of any party to raise defenses thereto.
10. DDMI will report to Dominion, the Monitor, the Administrative Agent as the representative of Dominion's first lien lenders (the "**First Lien Lenders**") and Wilmington Trust, National Association, as Trustee, Notes Collateral Agent, Paying Agent, Transfer Agent and Registrar on the 7.125% Senior Second Lien Notes due 2020 (the "**Indenture Trustee**") on the Sales in a manner that is agreed to by each of DDMI, Dominion, the Monitor, the Administrative Agent and Indenture Trustee or as may be ordered by the Court. Any such reporting to the Administrative Agent and Indenture Trustee shall be deemed to be made without any representation or warranty from DDMI to the Administrative Agent, the First Lien Lenders or Indenture Trustee and, with respect to such reporting, DDMI shall not have any liability to the Administrative Agent, the First Lien Lenders or Indenture Trustee resulting from such parties' use of such reporting or any errors therein. For the avoidance of doubt, the foregoing reporting obligations are in addition to those set forth in Schedule "A" hereto"
11. The Monitor or any person with an interest in the DDMI Collateral may seek advice or directions from the Court in respect of the Monetization Process on reasonable notice to all other interested persons. All persons with an interest in the DDMI Collateral shall act in good faith and in a commercially reasonable manner in respect of the Monetization Process. Any Sale of the DDMI Collateral by auction or closed tender (when permitted by Schedule "A" hereto), and completed in accordance with industry standards shall be and is hereby deemed to be commercially reasonable.

SCHEDULE A PROCEDURE FOR SALE OF DDMI COLLATERAL

Key Principles

Striving for diamond production value optimization by following a number of key principles across all sales:

1. Product must be fully cleaned and sorted in a wide variety of diamond categories (sizes, colours, clarities, shapes) to be able to offer the right products to the right customers. This sorting process needs to be executed in a safe and secure operation.
2. Timing of sales must as much as possible be aligned to market cycles placing the right volume of product aligned with market demand.
3. A professional experienced well-equipped team is required to execute the sales process, optimize the sale proceeds (taking into consideration the existing circumstances facing the diamond market) and collect cash in a fast and cost-efficient manner.

Disclosure to First Lien Lenders

Dominion and the Monitor shall promptly provide the Administrative Agent with any and all information, documents and notices provided to either of such parties by DDMI in accordance with the Diavik joint venture agreement (the “**JVA**”), including but not limited to Programs and Budgets, notices of emergency or unexpected expenditures incurred, particulars of cash calls submitted to Participants under the JVA and confirmation of any Cover Payments made by DDMI in respect of cash calls made to Dominion; provided, however, that in the event that the Administrative Agent accedes or is assigned the rights of Dominion under the JVA by law, equity or otherwise, DDMI shall provide all information, documents and notices to be provided to Dominion under the JVA to the Administrative Agent. All information, documents and notices received by the Administrative Agent from either Dominion or the Monitor pursuant to this paragraph shall be subject to the confidentiality provisions in the First Lien Credit Agreement and DDMI shall not have any responsibility or liability to the Administrative Agent with respect to the information, documents and notices disseminated by either Dominion or the Monitor to the Administrative Agent pursuant to this paragraph.

Procedure for Sale of DDMI Collateral

To the extent it agrees to exercise its right to sell the DDMI Collateral pursuant to Section 4 of the Monetization Process, DDMI will follow the following process:

1. DDMI or persons who are affiliates of or retained by DDMI will handle the DDMI Collateral in a commercially reasonable manner and generally apply the same processes, audits and analysis as such persons utilizes with any equivalent DDMI Production.
2. DDMI or persons who are affiliates of or retained by DDMI will insure, import, clean, sort, value and sell the DDMI Collateral using their existing secure infrastructure, including existing experienced teams, security systems, diamond stock tracking software, sorting technology and experts, pricing methods, contracts (other than long term contracts providing for pricing which may represent a discount to the prevailing market), auction platform, and industry network.

3. The DDMI Collateral will be sorted and valued using the same sorting product line, Diavik Mine samples and pricebook that is applied to any equivalent DDMI Production.
4. DDMI or persons who are affiliates of or retained by DDMI will sort and phase the DDMI Collateral over the Q4 2020 and Q1/Q2 2021 periods to avoid a high volume of product being offered at once and to help optimize sales proceeds unless, in DDMI's reasonable business judgment, market conditions would allow a higher volume of product to be sold without negatively impacting the market.
5. DDMI or persons who are affiliates of or retained by DDMI will sell all DDMI Collateral using an auction process and with distribution of proceeds being made in accordance with the Monetization Process; provided, however, that: (i) DDMI may sell "Selected Diamonds" by closed tender where it is industry practice to do so and make distribution of Dominion's 40% share of proceeds in accordance with the Monetization Process; and (ii) DDMI may sell the DDMI Collateral in such other manner as agreed to by DDMI, Dominion, the Administrative Agent and the Monitor, or as otherwise ordered by the Court.

Transparent process

Our interests and those of the Diavik stakeholders are fully aligned as both are seeking to optimize returns for sales of Split Product and a safe operation of the asset.

In order to further satisfy any further needs of the Monitor, First Lien Lenders, other creditors and other stakeholders, and to demonstrate that due process is followed to optimise the value of Dominion's share, we are committed to work constructively with the parties by providing full transparency into to the status of the monetisation, subject to regulatory constraints. At a minimum, monthly reporting will be provided to the Monitor and the Agent of the First Lien Lenders with respect to the following items:

- Detailed listing of inventory offered for sale
- Provide to Dominion, the Monitor and the Administrative Agent (subject to entering into commercially reasonable confidentiality and restriction on use arrangements with the Administrative Agent) diamond sorting results (size and quality analysis)
- Provide to Dominion, the Monitor and the Administrative Agent (subject to entering into commercially reasonable confidentiality and restriction on use arrangements with the Administrative Agent), DDMI's handling, sales and cash collection fee
- Unsold inventory will be safely stored in Rio Tinto's secure premises and insured by Rio Tinto
- Permit an independent and internationally recognized accounting firm to audit the records and information identified above, at Dominion's sole cost and expense (subject to entering into commercially reasonable confidentiality arrangements with such accounting firm including without limitations confidentiality arrangements with respect to information which such accounting firm may share with any other Person including, without limitation, Dominion, the Monitor and/or the Administrative Agent). DDMI will (subject to entering into commercially reasonable confidentiality and restrictions on use arrangements with Dominion) permit Dominion to have periodic access to the DDMI Collateral, at Dominion's cost, upon reasonable notice for the purpose of verifying and assessing value of the DDMI

Collateral. Dominion shall accord with DDMI's safety and security policies and procedures when viewing the DDMI Collateral.

- DDMI will (subject to entering into commercially reasonable confidentiality and restrictions on use arrangements with Dominion) facilitate quarterly / ½ yearly meetings with Dominion, the Monitor and the Agent to review market and sale results and permit on-site (if and when appropriate and safe) or virtual tours and/or meetings to introduce key team members and show key processes & infrastructure.