

COURT FILE NUMBER 20016-05630

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT 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 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 SECOND REPORT OF FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR 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.

May 7, 2020

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SECOND REPORT OF THE MONITOR

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SECOND REPORT OF THE MONITOR

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INTRODUCTION

1. On April 22, 2020, 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. (collectively, “**Dominion**” or the “**Applicants**”) were granted an initial order (the “**Initial Order**”) to commence proceedings (the “**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).
2. The Initial Order appointed FTI Consulting Canada Inc. as Monitor in the CCAA Proceedings (the “**Monitor**”) and established a stay of proceedings (the “**Stay of Proceedings**”) in favour of the Applicants until May 2, 2020. The Stay of Proceedings has since been extended until and including June 1, 2020 by a subsequent Amended and Reinstated Initial Order (the “**ARIO**”) granted by this Honourable Court on May 1, 2020.
3. One of the Applicants, Dominion Diamond Mines ULC (“**Dominion Diamond**”) is party to the Diavik Joint Venture Agreement dated March 23, 1995 (as amended from time to time, the “**Diavik JVA**”). Dominion Diamond's counterparty to the Diavik JVA is Diavik Diamond Mines (2012) Inc. (“**DDMI**”). DDMI is a subsidiary of Rio Tinto plc (“**Rio Tinto**”). DDMI is the "Manager" of the Diavik Diamond Mine joint venture (the “**Diavik JV**”), pursuant to the Diavik JVA. On April 30, 2020 DDMI filed an application in the CCAA Proceedings, proposing that the ARIO include the following:
 - a. a declaration that nothing in the ARIO shall prevent DDMI from making Cover Payments in respect of outstanding contributions or cash calls, as defined and contemplated in Diavik JVA on an ongoing basis and in accordance with the terms and conditions of the Diavik JVA;
 - b. authorization for DDMI to securely store a portion of Dominion Diamond’s share of production from the Diavik JVA at the Diavik Production Splitting Facility in Yellowknife, Northwest Territories (the “**PSF**”) equal to the amount of the Cover

Payments (the “PSF”) until such time as Dominion Diamond repays such Cover Payments; and

- c. a declaration that the Court-ordered charges granted in the CCAA Proceedings shall be subordinate to the charge held by DDMI for the Cover Payments;

(collectively, the "**DDMI ARIO**").

- 4. On May 7, 2020 the Applicants circulated an alternative proposed ARIO (the "**Dominion ARIO**") that would be modified to include, among other things, the following:

- a. a declaration that nothing in the ARIO shall prevent DDMI, with prior written consent of the Monitor, from making Cover Payments as provided for in the Diavik JVA and obtaining a security interest Dominion Diamond's Assets, as defined and to the extent provided for in the Diavik JVA;
- b. a declaration that other than as described in the preceding paragraph, DDMI is subject to the Stay of Proceedings and prohibited from retaining any portion of the Applicants' diamond production from the Diavik JV or from taking any other actions that could adversely affect the Applicants;
- c. a declaration that nothing in the proposed amended ARIO shall prevent the Applicants from repaying the Cover Payments with consent of the Applicants' senior secured lenders and any lender under any interim facility entered into by the Applicants; and
- d. a direction to DDMI to promptly deliver to Dominion Diamond its share of diamond production from the Diavik JV.

PURPOSE

5. The purpose of this second report of the Monitor is to provide this Honourable Court and the Applicants' stakeholders with information and the Monitor's comments with respect to the following:
 - a. the cash calls scheduled to be made by the joint venture participants in respect of the Diavik JV, Cover Payments that may be made by DDMI during the CCAA Proceedings;
 - b. facts regarding the process for diamond splitting under the Diavik JVA as governed by a January 7, 2003 Agreement to Establish a Protocol for Diamond Production Splitting, as amended from time to time and most recently amended on July 2, 2019 (the "**Splitting Protocol**");
 - c. factual and practical considerations with respect to the treatment of the Cover Payments and diamond production from the Diavik JV during the CCAA Proceedings;
 - d. the status of pre-filing payment amounts to critical suppliers (the "**Pre-Filing Payment Amounts**");
 - e. certain details with respect to the Applicants' cash management systems; and
 - f. the Monitor's efforts to implement a document management system to coordinate Court materials filed in the CCAA Proceedings.

TERMS OF REFERENCE

6. In preparing this report, the Monitor has relied upon certain information (the "**Information**") including Dominion's unaudited financial information, books and records and discussions with senior management ("**Management**").

7. Except as described in this report, the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
8. The Monitor has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
9. Future oriented financial information reported to be relied on in preparing this report is based on Management's assumptions regarding future events. Actual results may vary from forecast and such variations may be material.
10. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

DIAVIK JV COVER PAYMENTS

11. The operations of the Diavik JV are funded by monthly or semi-monthly cash contributions by the joint venture partners (or "**Participants**"), Dominion Diamond and DDMI, who in turn receive a proportionate share of diamond production in kind pursuant to the Splitting Protocol. Dominion Diamond has a 40% interest in the Diavik JV, and DDMI has a 60% interest.
12. As noted, DDMI is the Manager under the Diavik JVA. The Manager holds title to all the Assets comprising the Diavik JV, in trust for the Participants. The Manager is required to make all expenditures on behalf of the Diavik JV, including with respect to all goods and services provided to the Diavik JV. The Manager issues cash calls to the respective Participants, who are required to make their respective proportionate payments to compensate the Manager for its services, and reimburse its costs. Pursuant to section 9.2 of the Diavik JVA, the Manager issues cash calls in advance, for the estimated costs of the ensuing period.

13. On April 22, 2020, the date of the Initial Order, the Applicants defaulted on a cash call due that day in the approximate amount of \$16.0 million. The Monitor understands that this cash call was to cover the estimated costs of the Manager for the last two weeks of April, 2020.
14. Based on a Diavik JV Cash Call Schedule prepared by DDMI (the "**Cash Call Schedule**"), the total cash calls that are scheduled for the remainder of 2020 total approximately \$284.6 million, of which Dominion's proportionate 40% share is approximately \$113.8 million. The estimated cash calls and proportionate share of each Diavik JV participant are summarized in the table below:

Diavik JV Cash Call Schedule
(\$000s)

Month	Dominion 40%	DDMI 60%	Total 100%
May	\$ 28,760	\$ 43,140	\$ 71,900
June	13,700	20,540	34,240
July	13,850	20,770	34,620
August	12,770	19,150	31,920
September	9,600	14,400	24,000
October	10,640	15,960	26,600
November	13,160	19,740	32,900
December	11,350	17,020	28,370
Total	\$113,830	\$170,720	\$284,550

15. The cash flow statement ("**Cash Flow Statement**") included in the Affidavit of K. Kaye dated April 21, 2020 (the "**Kaye Affidavit**") and summarized in the Pre-filing Report of the Proposed Monitor dated April 21, 2020 demonstrates that the Applicants have insufficient liquidity to make the cash calls for the Diavik JV during the thirteen weeks ending July 17, 2020, and no provision is made therein for such payments. Dominion Diamond's aggregate share of Diavik JV cash calls that correspond with the 13 weeks of the Cash Flow Statement is approximately \$56 million.

16. The Diavik JVA contemplates the present situation, in which a Participant has defaulted on a cash call, and provides:

- a. upon default by Dominion Diamond, DDMI may, but is not required to, make a Cover Payment to meet the cash call on behalf of Dominion;
- b. each Cover Payment constitutes indebtedness due from Dominion Diamond to DDMI, that is payable on demand and shall bear interest at the rate provided for in the Diavik JVA;
- c. Dominion Diamond, as the defaulting Participant, grants DDMI a mortgage and security interest in Dominion Diamond's right, title and interest in the Assets (as defined in the Diavik JVA and essentially, all of the real and personal property in the Diavik JV held by the Manager for the benefit of Dominion Diamond) (the "**DDMI Security Interest**"); and
- d. Dominion Diamond has represented and warranted to DDMI that the Security Interest will at all times rank first, ahead of all of Dominion Diamond's other security interests or mortgages (as reported in paragraphs 76 and 77 of the April 21, 2020 Affidavit of Krystal Kaye (the "**Kaye Affidavit**"), the Administrative Agent under the Applicants' first lien credit facility and the Trustee with respect to the Applicants' second lien notes have both entered into Subordination Agreements, pursuant to which they agreed to subordinate their security in the Assets to the DDMI Security Interest).

17. If DDMI makes Cover Payments and the DDMI Security Interest arises, the Diavik JVA (in section 9.4) provides certain remedies to DDMI, including:

- a. a power of sale as to any property subject to the DDMI Security Interest;
- b. the ability to elect to adjust the Participants' relative joint venture interests in the Diavik JVA to account for the default;

- c. an ability to elect to purchase Dominion's interest in the Diavik JV at 80% of fair market value; and
- d. in addition to the remedies set out in the Diavik JVA, the exercise of any and all rights and remedies available at common law or by statute.

DIAVIK DIAMOND SPLITTING AND DELIVERY

- 18. Pursuant to the Splitting Protocol, all diamonds produced by the Diavik JV are delivered to the PSF, at which point the diamonds are sorted by size and category.
- 19. The diamonds are then split proportionately amongst the two Participants at the time of each Government of the Northwest Territories ("GNWT") royalty valuation, which currently occurs twelve times a year. Certain selected diamonds of less common size or category (the "**Selected Diamonds**") are excluded from the split and shipped to the Rio Tinto group's Antwerp, Belgium sorting facility and then purchased by one of the joint venture Participants under an auction process prescribed in the Splitting Protocol.

PRACTICAL CONSIDERATIONS REGARDING THE RELIEF BEING SOUGHT BY DDMI – COVER PAYMENTS

- 20. The Monitor is not advocating for or against the relief sought by DDMI. The Monitor understands that various stakeholders will present full legal argument to the Court at the May 8 hearing, advocating in favour of, or in opposition to, that relief. However, the Monitor makes the following practical and factual observations, to assist the Court.
- 21. As noted above, the Applicants' cashflow demonstrates that they have insufficient liquidity to make the cash calls required under the Diavik JVA. The Diavik JVA allows DDMI to make the Cover Payments in such circumstances and DDMI appears to be able and willing to do so.
- 22. The practical consequences of the Applicants of DDMI making Cover Payments is that, as contemplated in the Diavik JVA, Dominion Diamond will become indebted to DDMI in

the aggregate amount of the Cover Payments. DDMI will receive the benefit of the DDMI Security Interest for such amounts, which appears to be a first-ranking security interest against Dominion Diamond's interests in the Assets. From a liquidity perspective, allowing DDMI to make the Cover Payments would be neutral to the Applicants, as there would be no current impact on the Applicants' constrained cash flow.

23. Based on the Cash Call Schedule, the aggregate amount of Cover Payments that will be secured by the DDMI Security Interest, will be approximately \$71 million by the end of July and \$84 million by the end of August. As the Applicants have reported to the Court and their stakeholders, they intend to seek approval for a Sales and Investment Solicitation Process ("**SISP**"), likely in the next few weeks. In any sale or investment transaction involving the Applicants' interest in the Diavik JV, the aggregate amount of Dominion Diamond's indebtedness to DDMI with respect to Cover Payments made by DDMI (depending on the structure of a transaction) may have to be paid or otherwise satisfied, in priority to any payment or satisfaction of the Applicants' first lien loan or the Applicants' second lien notes.
24. The Monitor has had discussions with Evercore Inc. ("**Evercore**") in its capacity as the Applicants' financial advisor. Evercore has good knowledge of the Applicants' business and assets and the likely market therefor in the context of a SISP. It is expected that Evercore will be the Applicants' sales agent in the SISP. Evercore has confirmed to the Monitor its view that the anticipated indebtedness of Dominion Diamond to DDMI that would arise, should DDMI make all future Cover Payments not paid by Dominion Diamond, would not have any significant impact on the net results of a SISP.
25. Given the foregoing practical considerations, the Monitor is of the view that in the circumstances, if DDMI is permitted to make the Cover Payments, there should be no material detrimental impact on the Applicants, their operations or the SISP. If the CCAA Proceedings continue past the end of August 2020 (or sooner, if circumstances change materially), the net impact on the Applicants and their stakeholders would need to be reassessed.

PRACTICAL CONSIDERATIONS REGARDING THE RELIEF BEING SOUGHT BY DDMI – POSSESSION OF DIAMONDS

26. The most critical distinction between the DDMI ARIO and the Dominion ARIO is that the Dominion ARIO provides for Dominion Diamond to continue taking delivery of diamond production in the normal course while remaining in default with respect to its cash calls, while the DDMI ARIO provides for at least some of Dominion Diamond's share of the diamond production from the Diavik JV to be held at the PSF and remain subject to the DDMI Security Interest until the Cover Payments are repaid.
27. The main practical consequence of DDMI retaining possession at the PSF of certain of Dominion Diamond's share of diamonds produced by the Diavik JV is that, once the Applicants' diamond supply chains begin operating again, the Applicants will not have access to those diamonds for the purpose of monetizing them and generating revenue.
28. The Monitor has discussed this practical consequence with Management. Management has confirmed to the Monitor that:
- a. in the short term (given the complete shutdown of the Applicants' supply chain, the current levels of diamond inventory presently in the supply chain and the inability to sell diamonds) there is no immediate impact on the Applicants, of their inability to access their diamonds; but
 - b. given the unpredictability of the COVID-19 related lockdowns and the lack of clarity about when and to what extent they will be lifted, it is virtually impossible to forecast when the Applicants' supply chain will begin moving again. Therefore, it is impossible to predict when the Applicants would be impacted by not having access to all of Dominion Diamond's production from the Diavik JV, and the magnitude of that impact.
29. Given the foregoing practical considerations, the Monitor is of the view that in the present circumstances, if DDMI is permitted to retain possession of some of Dominion Diamond's

production at the PSF, there should be no immediate detrimental impact on the Applicants, their current 13-week Cash Flow Statement, their current operations or the SISP. However, given that no one can predict when and to what extent the Applicants' supply chain and sales will recommence, it is impossible to predict what impacts the Applicants might suffer in the medium or long-term, if they did not have access to all of Dominion Diamond's production from the Diavik JV.

30. If this Honourable Court orders amendments to the ARIO that provide for DDMI to retain a portion of Dominion Diamond's production from the Diavik JV, there are certain practical protections that should be included in any such Order, to protect the Applicants and their stakeholders, as follows:

- a. the amount of diamonds held should be limited to the amount of the Cover Payments and any excess diamonds should be delivered to Dominion Diamond in the normal course;
- b. under the current market conditions, DDMI should be prohibited from selling, disposing or otherwise dealing with any held diamonds, absent agreement of the Applicants or further order of this Honourable Court;
- c. DDMI should provide detailed reporting to the Applicants and the Monitor, and Dominion Diamond should be entitled to audit or inspect any diamonds that may be held;
- d. DDMI should segregate any held diamonds at the PSF and provide for adequate safeguarding and insurance coverage to fully protect them;
- e. any cure rights in respect of the Cover Payments held by Dominion Diamonds or a potential purchaser should be preserved and exercisable unilaterally by the Applicants, thereby allowing for the immediate release to Dominion Diamonds of held diamonds upon Cover Payments being made;

- f. the ability of the Applicants or any other stakeholder to apply to the Court to vary such an Order, in the event that circumstances have changed;
 - g. selected diamonds should be eligible to be excluded from the relief and dealt with as provided for under the Splitting Protocol; and
 - h. any relief should be granted without prejudice to the Applicants' and all other stakeholders' rights.
31. If this Honourable Court grants the Dominion ARIO, the Monitor is willing to fulfil the role of consenting to Cover Payments, as set out therein. The Monitor understands that its role would be to compare any Cash Calls and Cover Payments as against the Cash Call Schedule and any relevant backup documentation, and to question any apparent discrepancies.

PRE-FILING PAYMENT AMOUNTS

32. Since the commencement of the CCAA Proceedings, no amounts have been paid to those parties identified as potential critical suppliers. The Monitor's views regarding critical suppliers have not changed since the Pre-Filing Report of the Proposed Monitor dated April 21, 2020 and the Monitor continues to liaise with the Applicants with respect to the Pre-filing Payment Amounts.

CASH MANAGEMENT

33. The Kaye Affidavit describes the Applicants' cash management systems including the operating bank accounts for various Dominion entities that are held at Citibank.
34. In order to effect cash disbursements under Dominion's current cash management systems, the Applicants first send a list of the planned payments to Citibank. Citibank then reviews Dominion's accounts to ensure that sufficient funds are available to make the payments. Citibank then pre-funds the requested disbursements to ensure that payments will clear.

35. The ARIO provides that the Applicants may continue to use its cash management systems and that the provider, Citibank, is an unaffected creditor in the CCAA Proceedings.
36. As reported orally to the Court on May 1, the Applicants and the Monitor have agreed to continue this arrangement as it allows Citibank to ensure that there are sufficient available funds to cover disbursements.

DOCUMENT MANAGEMENT TOOL

37. There are numerous stakeholder group with interests in the CCAA Proceedings, many of which are represented by legal counsel. Administering the CCAA Proceedings has additional complexity as a result of Court hearings being conducted virtually due to COVID-19 related social distancing protocols.
38. In order to coordinate filing and review of Court materials as well as facilitate Court presentations in a virtual format, the Monitor is in the process of setting up a CaseLines cloud-based document management platform.
39. The Monitor expects to have this platform available commencing in the week beginning May 11, and plans to provide instructions to the service list on how to use the CaseLines immediately thereafter.

All of which is respectfully submitted this 7th day of May 2020.

FTI Consulting Canada Inc.
in its capacity as Monitor of the Applicants



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