No. S-224444
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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 AND ARRANGEMENT OF CANADIAN DEHUA INTERNATIONAL MINES GROUP INC.

PETITIONER

APPLICATION RESPONSE

FORM 33 (RULE 8-1(10))

Application response of Canada Zhonghe Investment Ltd., (the "application respondent")

THIS IS A RESPONSE TO the notice of application of Qu Bo Liu filed December 31, 2024.

The application respondent estimates that the application will take 2 days.

PART 1: ORDERS CONSENTED TO

The application respondent consents to the granting of the orders set out in the following paragraphs of Part 1 of the notice of application on the following terms: NONE.

PART 2: ORDERS OPPOSED

The application respondent opposes the granting of the orders set out in paragraphs 1 of Part 1 of the notice of application.

PART 3: ORDERS ON WHICH NO POSITION IS TAKEN

The application respondent takes no position on the granting of the orders set out in paragraphs 2-4 (no position is taken in respect of paragraph 4 provided that no costs are awarded against the application respondent) of Part 1 of the notice of application.

PART 4: FACTUAL BASIS

1. The court has two offers before it:

   (a) $1,650,000 offer by Qu Bo Liu (the "Ms. Liu Offer"); and

   (b) $2,200,000 offer by West Moberly First Nations (the "West Moberly Offer").

2. Canada Zhonghe Investment Ltd. ("Canada Zhonghe") – a reasonably acting creditor wishing to maximize on the value of the debtor's assets – supports the West Moberly Offer because it is over one half million dollars higher than the Ms. Liu Offer (i.e. $550,000 or 33% larger than the Ms. Liu Offer).

3. Alternatively, to the extent that the court is concerned with the integrity of the process, the court ought to order a final round of sealed bids (requiring parties to make a minimum bid of $2,200,000) to level the playing field and address any fairness concerns.

PART 5: LEGAL BASIS

1. A CCAA proceeding is a dynamic and "real time" process that should only be stifled when to do otherwise would operate as a significant prejudice to a creditor or group of creditors.

   1587930 Ontario Ltd., Re, 2006 CarswellOnt 6419, 155 A.C.W.S. (3d) 257 at para. 22

2. As demonstrated by the case law, late bids in a sales process in insolvency proceedings are not unusual and reflect the dynamic and "real time" nature of insolvency proceedings. In the present case, the West Moberly Offer is an example of the dynamic nature of a prolonged sales process and approval of sale application. Up until the court approves an offer, there remains the possibility of a new, higher offer being introduced – it should not be stifled where it benefits the creditors.

3. On an approval of sale application, the primary interest to be considered by the court is that of the creditors and to see that the best possible price is obtained. A secondary interest is the integrity of the process.

Westcoast Savings Credit Union v. Wachal, 1988 CarswellBC 547, [1988] B.C.J. No. 2257 (C.A.) at para. 10 ("*Westcoast Savings*")

Modatech Systems Inc., Re, 1995 CarswellBC 1140, [1995] B.C.J. No. 2549 at paras. 14 and 17 ("*Modatech*")

Bank of Montreal v. Renuka Properties Inc., 2015 BCSC 2058 at paras. 31, 36 and 42 ("*Renuka*")

QRD (Willoughby) Holdings Inc. v. MCAP Financial Corporation, 2024 BCCA 318 at para. 70 ("*MCAP*")

4. Where there is the evidence of a higher bid (although not firmed up) the court has re-opened the sales process, taking into account the "significant factor" of an improved return for creditors.

1587930 Ontario Ltd., Re, 2006 CarswellOnt 6419, 155 A.C.W.S. (3d) 257 at paras. 11-13, 19-20, 23

5. Despite the expiry of a bid deadline and nothing unfair or improvident about the sales process, the court has refused to approve a lower, compliant offer where a late, higher bid has been introduced.

Westcoast Savings at paras. 9-11

Modatech at paras. 8, 16-20

Renuka at paras. 35, 37-39

MCAP at para. 72

6. A substantial difference in the price of the original bid and late bid in and of itself demonstrates that the sales process has failed to garner full market value for the assets – see *Renuka* as follows:

> 38 The disparity between the current high bid and the amount one of the interested parties is apparently willing to pay is of great concern. The difference is $474,000, or 46 percent higher using the face amount of the high bid, or $402,000 or 37 percent higher if the value of the high bid is to include the extra costs that have been borne by Royal Med.
>
> 39 This is a substantial difference, and it tends to show that the sale process has failed to garner full market value for the assets. It is difficult to discern an identifiable aspect of the sale process that would account for this disparity, but two of the prospective bidders identified both the short sale period and the

> perceived unfairness of the high bidder having assisted the receiver with the sale and, as general manager for the debtor companies, having an advantage over outside bidders.

7. Similarly, in *MCAP*, the Court of Appeal commented that the disparity in bids should compel the court to consider whether the process has elicited the highest offer:

> 67 . . . In my respectful view, these factors and the wide disparity between the bids may have led the receiver to focus its attention too quickly on the Redekop offer and fail to take any other bids or potential bids seriously. The potential of a bid being made at $64 million should have led the receiver — and ultimately the Court — to consider whether a longer marketing period was necessary to allow all the parties to have confidence that the process had likely elicited as good an offer as could be realistically expected.

8. Where there is uncertainty whether the late bid should prevail, the usual course is to order sealed bids. Ordering sealed bids is commonly resorted to where a difficulty appears on a motion to approve a sale.

British Columbia v. A & A Estates Ltd., 2000 BCCA 317 at paras. 41-42

Westcoast Savings at para. 11

9. The below table summarizes the foregoing cited decisions, all of which:

   (a) did not approve a lower offer in the face of a higher, late offer;

   (b) ordered sealed bids or re-opened the sales process (which the exception of *MCAP* wherein the Court of Appeal concluded that the chambers judge should have adjourned the approval of sale application to determine whether the prospective offer could be firmed up).

Case	**Facts**	**Decision**
Westcoast Savings Credit Union v. Wachal	The appellant submitted a compliant offer to the receiver. The receiver subsequently received two more offer and advised the chambers judge of the same. The chambers judge ordered sealed bids. The appellant appealed on the basis that its original offer ought to have been approved	The Court of Appeal dismissed the appeal and approved of the sealed bid process: *10 I agree with the judicial comments to which I have referred, that judicial auctions ought not to be encouraged and*

	instead of ordering sealed bids.	*that if they are carried too far, it would create chaos in the commercial world and receivers and purchasers would never be sure what was going to happen. But the primary duty of the court is to see that the best possible price is obtained for the property in question. Often, there will be one offer and then there will be other offers made at or about the time the application is ready to be heard. What is a receiver-manager to do in those circumstances? It seems to me that his duty is to put all the information which he has before the court with his recommendations.* *11 In this case, the receiver-manager did his duty. He placed the two offers, the St. Laurent and Ericksteen offers, before the court, informed the court of the possibility of the third offer by Anaka's client, and when he appeared before the court, presented the M.S.A. Holdings Ltd. offer. What is a judge to do when faced with that dilemma? Judges in this province have for quite some time now solved that problem by ordering that sealed bids be filed.*
Modatech Systems Inc., Re	The receiver applied to approve the sale of assets for $1,075,000. At the opening of the hearing, a bid of $1,500,000 was presented to the court.	The court ordered sealed bids remarking as follows: *16 In this case, the offer presented by 505000 on the morning of the hearing before me was 40 percent higher than 3999's tender, and an increase of $375,000 over its own second tender of November 20, 1995.*

		Despite that "substantial increase", I was reluctant to accept 505000's latest offer. I was convinced that both 505000 and 3999 were seeking to gain an advantage in the process. Both, at different points in time, had generated an emergency. The secured creditor did so by forcing the receiver to "compress" the sales process and utilizing the court to achieve "foreclosure" without awaiting the time limits in the PPSA. 505000 produced a "low ball" bid in the tender process, a "jump bid" slightly in excess of the highest tender in that process, and saved its "serious offer" for the morning of this hearing. Let me say that if I had before me only 505000's second tender of November 20, 1995, the result would be different. *17 However, 505000's latest offer was so significant an increase that it triggered the "primary duty of the court to obtain the best possible price" and overrode the secondary consideration of "integrity of the process." That integrity had already been somewhat impaired by the one-day extension which enabled 3999 to submit the highest tender. Counsel for 3999 put the issue succinctly at the opening of his submission: "Is it proper, in the circumstances of this case, to take $425,000 out of the hands of the unsecured creditors?" I decided that it was not.*
1587930 Ontario	The court considered the approval of	The court re-opened the sales

Ltd., Re	sale of a hotel in a CCAA proceeding. After the first day of hearing, the court was provided a letter which "purported to firm up an improved offer". The Monitor advised the court of three options: a) accept the original offer of the secured creditor b) accept the new offer c) re-open the opportunity to any party to put in a further offer on a short timeframe.	process: *19 It is with some reluctance that I have concluded that in the circumstances, option 3 is the most appropriate at this time. I am mindful that this is a CCAA proceeding, not an auction process. Both sides have pointed to the decision of the Court of Appeal in Royal Bank v. Soundair Corp. [1991 CarswellOnt 205 (Ont. C.A.)] as setting out the guiding principles. The factual distinction between this case and the facts in Soundair is that here there is at least the potential for a much-improved return for unsecured creditors.* *20 The improved return is a factor, which while not necessarily the only consideration, it is a significant one. While I am concerned with the risk to the estate of the company of the cost of the further time involved, I have concluded that it is a risk worth taking, since the unsecured creditors who will bear that risk are prepared to do so.* *. . .* *22 A CCAA proceeding is different from an ordinary civil action and trial. The process itself anticipates dynamic and "real time" process that should only be stifled when to do otherwise would operate as a significant prejudice to a creditor or group of creditors. There is no need to apply the criteria of introduction of new evidence to*

		this proceeding in my view. *23 What is of greater significance is whether the offer process should be allowed to continue. I have concluded that in these somewhat unique circumstances that it should.* *24 I do think that it would operate unfairly to Sagecrest to accept they Soorty/Cocov offer outright at this stage. Among other matters, there is an outstanding appeal by Sagecrest of disallowance of part of its claim, which is waived only if its offer is accepted. In addition, Sagecrest has become in effect a "stalking horse" with its firm offer and should not be prejudiced by what is both a last minute and still somewhat uncertain position.* *25 In addition, the unsecured creditors should not be deprived of the possibility of Court consideration of an improved Sagecrest offer.*
Bank of Montreal v. Renuka Properties Inc.	The original offeror had abided by the rules and submitted a bid of $1,025,000 (effective value $1,097,000) within the timelines. At the court hearing, three interested parties appeared and the court ordered them to submit a "form of bid" although not an actual bid to "test the waters". As a result, one of the interested parties submitted a bid of $1,499,000.	The court ordered sealed bids: *38 The disparity between the current high bid and the amount one of the interested parties is apparently willing to pay is of great concern. The difference is $474,000, or 46 percent higher using the face amount of the high bid, or $402,000 or 37 percent higher if the value of the high bid is to include the extra costs that have been borne by Royal Med.* *39 This is a substantial*

		difference, and it tends to show that the sale process has failed to garner full market value for the assets. It is difficult to discern an identifiable aspect of the sale process that would account for this disparity, but two of the prospective bidders identified both the short sale period and the perceived unfairness of the high bidder having assisted the receiver with the sale and, as general manager for the debtor companies, having an advantage over outside bidders. *40 These matters invoke three of the Soundair factors: sufficient sale efforts, efficacy and integrity of the sale process and possible unfairness. I do not conclude that it was improper for the receiver to have used the services of the former general manager in this way, nor that this party should have been denied the opportunity to bid, but nonetheless he had an advantage the others did not have and they may have been unable to make up that disadvantage in the short time available.* *41 Much was made in the submissions before me about maintaining the integrity of the receiver's sale process. I agree with those sentiments, but the rule is not absolute. . .* *42 In my view, according deference to the receiver's decision to accept and recommend approval of Royal Med's bid, in circumstances where another bidder appears to be willing to pay 37 percent*

		more, would be to place excessive weight and too high a premium on the deference factor. The authorities make it clear that the interest of the creditors is still the primary factor. For those reasons I decline to approve the sale of the assets to Royal Med.
QRD (Willoughby) Holdings Inc. v. MCAP Financial Corporation	The chambers judge approved a compliant offer, recommended by the receiver in the amount of $35M despite that the debtors had brought forward a potential offer with a contemplated purchase price of $64M.	The Court of Appeal concluded that the chambers judge should not have approved the offer without giving a few weeks additional time to determine whether the higher offer would materialize: *72 In all the circumstances, it seems to me that the 'balancing' process carried out by the court below was not done in a manner that was fair and could be seen to be fair by all parties. Respectfully, I conclude that the chambers judge erred in proceeding to grant the Asset Vesting Order without giving additional time — say two to four weeks — so that all parties could be satisfied either that the BC Builds offer could not be firmed up appropriately, that it was simply not worthwhile to wait any longer, or that the fair market value of the property was in the vicinity of $34 million.*

Ms. Liu Offer Does Not Satisfy Section 36

10. Section 36 of the *CCAA* states:

> 36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court

may authorize the sale or disposition even if shareholder approval was not obtained.

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

(5) For the purpose of subsection (4), a person who is related to the company includes

(a) a director or officer of the company;

(b) a person who has or has had, directly or indirectly, control in fact of the company; and

(c) a person who is related to a person described in paragraph (a) or (b).

. . .

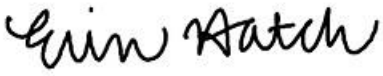
11. Ms. Liu is a related person. Section 36(3) or (4) of the CCAA has not been satisfied to permit the approval of the Ms. Liu Offer.

PART 6: MATERIAL TO BE RELIED ON

1. Pleadings and Monitor's Reports filed in this proceeding.

☑ The application respondent has filed in this proceeding a document that contains the application respondent's address for service.

Date: January 8, 2025



HARPER GREY LLP
(Per Erin Hatch)
Lawyer for the application respondent,
Canada Zhonghe Investment Ltd.

Name and address of lawyer:
HARPER GREY LLP
Barristers & Solicitors
3200 – 650 West Georgia Street
Vancouver, BC V6B 4P7
Telephone: 604 687 0411
Email: ehatch@harpergrey.com
Attn: Erin Hatch/cy/150551