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., WAPITI COKING COAL MINES CORP. AND CANADIAN BULLMOOSE MINES CO., LTD.

PETITIONERS

## APPLICATION RESPONSE

**Application response of:** **China Shougang International Trade & Engineering Corporation** (the "**Application Respondent**" or "**Shougang**")

THIS IS A RESPONSE TO the notice of application of Qu Bo Liu filed December 31, 2024 (the "**Interim Lender's Application**").

The Application Respondent estimates that the Interim Lender's Application will take two days.

### Part 1: ORDER CONSENTED TO

The Application Respondent consents to the granting of NONE of the orders set out in Part 1 of the Interim Lender's Application.

### Part 2: ORDERS OPPOSED

The Application Respondent opposes the granting of the orders set out in paragraphs 1 and 4 of Part 1 of the Interim Lender's Application.

The Application Respondent also opposes the orders set out in paragraph 1 of Part 1 of the notice of application of Canadian Dehua International Mines Group Inc. ("**CDI**"), Wapiti Coking Coal Mines Corp. ("**Wapiti Corp.**"), and Canadian Bullmoose Mines Co., Ltd. ("**Bullmoose Co.**", and collectively with CDI and Wapiti Corp., the "**Petitioners**") filed October 10, 2024 (the "**Petitioners' 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 and 3 of Part 1 of the Interim Lender's Application.

## Part 4: FACTUAL BASIS

### Background

1. CDI is owned 50% by Naishun Liu and 50% by his spouse, Qu Bo Liu ("**Mrs. Liu**"). CDI owns 100% of the shares of Wapiti Corp. and Bullmoose Co.

**Eighteenth Report of the Monitor, dated October 8, 2024 ("18th Report"), para. 2.**
**Fourth Affidavit of Naishun Liu made October 8, 2024 ("4th Liu Affidavit"), paras. 4, 6, 8.**

2. On April 6, 2022, Shougang filed an application (the "**Bankruptcy Application**") for an order that CDI be adjudged bankrupt and that a bankruptcy order be made in respect of the property of CDI pursuant to *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.

**18th Report, para. 3.**

3. In response to the Bankruptcy Application, on June 3, 2022, CDI sought and was granted an initial order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "***CCAA***"). Among other things, the Initial Order included a stay of proceedings (the "**Stay of Proceedings**"), which stayed the Bankruptcy Application among other proceedings against CDI.

**18th Report, para. 4.**

4. On June 9, 2022, CDI was granted an amended and restated initial order (the "**ARIO**"), which, among other things, approved an interim financing facility (the "**DIP Loan**") from Mrs. Liu (in such capacity, the "**DIP Lender**") and a corresponding charge in favour of the DIP Lender to secure repayment of the DIP Loan (the "**DIP Lender's Charge**").

**18th Report, paras. 5–6.**

5. The amount of the DIP Loan and the DIP Lender's Charge has been increased a number of times. On January 17, 2024, the DIP Loan and the DIP Lender's Charge was increased to $1,680,000.

**18th Report, para. 17.**

6. The advances under the DIP Loan totaled $1,499,331.16 as of on or about September 7, 2024.

**Affidavit #1 of Xiao Liu made October 15, 2024, para. 18, Ex. E.**

7. As of November 18, 2024, no further advances had been made pursuant to the DIP Loan.

**Twentieth Report of the Monitor, dated November 18, 2024 ("20th Report"), para. 41(a).**

8. In additional to the DIP Lender's Charge, the ARIO granted a charge in favour of the Monitor, counsel to the Monitor, and counsel to the Petitioners in the amount of $350,000 as security for their respective fees and disbursements (the "**Administration Charge**"), which ranks in priority to the DIP Lender's Charge.

**ARIO, paras. 30, 40.**

9. As of November 18, 2024, the outstanding amount secured by the Administration Charge was approximately $315,000.

**20th Report, para. 41(c).**

10. On August 18, 2022, CDI sought and obtained an order approving a sales and investment solicitation process (the "**Initial SISP Order**") with respect to certain assets of CDI. The Initial SISP Order was "intended to solicit interest in and opportunities for a sale of or investment in [CDI's] interest in the Wapiti Project or [CDI] generally". The "**Wapiti Project**" is the Wapiti River coal project located near Tumbler Ridge, which is owned and operated by Wapiti Corp.

**20th Report, para. 8.**
**Initial SISP Order, Schedule "B", para. 1.**

11. On November 30, 2022, the Initial SISP Order was modified by further order of this Court (the "**Modified SISP Order**"). Among other things, the Modified SISP Order:

(a) added the "**Bullmoose Project**", which is a coalfield exploration project also located near Tumbler Ridge owned and operated by Bullmoose Co., to the sales and investment solicitation process;

(b) established a deadline for non-binding letters of intent ("**LOI**") of March 10, 2023 (the "**LOI Deadline**"); and

(c) set out that the binding bid deadline would be no later than June 18, 2023.

**Modified SISP Order, Schedule "B", paras. 1, 3, 11.**
**20th Report, para. 11.**

12. At the time of the Modified SISP Order, only CDI was a petitioner in this *CCAA* proceeding, neither Wapiti Corp. nor Bullmoose Co. were subject to the ARIO or petitioners in this *CCAA* proceeding.

13. As of the LOI Deadline, CDI had received no LOIs pursuant to the Modified SISP Order but did have an LOI for 60% of CDI's shares of Wapiti Corp. (the "**Wapiti LOI**").

**Twenty First Report of the Monitor, dated December 12, 2024 ("21st Report"), para. 14.**

14. Subsequent to the LOI Deadline, CDI advised the Monitor that it continued to pursue the Wapiti LOI with a goal of converting it into a binding agreement of purchase and sale. However, CDI was unable to convert the Wapiti LOI or any other interest into a binding agreement of purchase and sale.

**21st Report, paras. 15–16.**

15. The Modified SISP Order failed to result in any binding offers for a sale or investment in CDI's interests in either of the Wapiti Project or the Bullmoose Project, or CDI generally.

**Summary of Current Offers**

16. On August 30, 2024, and as a result of interest in the Wapiti Project and the Bullmoose Project from TaneMahuta Capital ("**TMC**") and the DIP Lender, the Court ordered (the "**Binding Offer Order**") that, among other things:

> 3. Binding offers for the Wapiti and Bullmoose assets shall be submitted to the Monitor no later than 4:00 p.m. on September 6, 2024;
>
> 4. Binding offers for the Wapiti and Bullmoose assets shall be considered at a one day hearing on September 17, 2024;

**Seventeenth Report of the Monitor dated September 16, 2024 ("17th Report"), para. 9.**
**Order made after Application granted August 30, 2024 ("Binding Offer Order"), paras. 3–4.**

17. On September 6, 2024, two offers were received by the Monitor. The first was a binding purchase agreement from the DIP Lender (the "**DIP Lender Offer**") and the second was a binding offer from TMC (the "**Initial TMC Offer**").

**21st Report, para. 23.**

18. As set out in the 17th Report, the consideration under the DIP Lender Offer was $1,650,000, and the TMC Offer was for $650,000. At the Offer Deadline, the DIP Lender Offer represented the best offer available.

**17th Report, para. 28.**

19. However, in discussions on the form of vesting order, it became apparent that the DIP Lender was seeking a vesting order in respect of the assets related to the Bullmoose Project and the Wapiti Project not held directly by CDI in addition to a vesting order for the shares of Wapiti Corp. and Bullmoose Co. owned by CDI.

**21st Report, para. 24.**

20. As such, counsel for CDI and the Monitor advised the DIP Lender's counsel that the Court could not approve the requested form of vesting order because neither Wapiti Corp. nor Bullmoose Co. were petitioners in this *CCAA* proceedings. At the hearing on September 17, 2024, the Court was advised that CDI was seeking an extension of the Stay of Proceedings and that CDI would return to the Court to seek to add Wapiti Corp. and Bullmoose Co. as petitioners such that the vesting order sought by the DIP Lender could be approved.

**18th Report, paras. 38–39.**

21. Although the Court "considered" the binding offers received by the Offer Deadline at the hearing on September 17, 2024, neither the DIP Lender Offer nor the Initial TMC Offer were approved by the Court at that hearing.

22. On October 15, 2024, TMC submitted a further offer in the form of a purchase agreement (the "**TMC Offer**").

**Nineteenth Report of the Monitor dated October 16, 2024 ("19th Report"), para. 38.**

23. Under the TMC Offer, TMC would purchase CDI's shares of Wapiti Corp. and Bullmoose Co., the assets of the Wapiti Project (held by CDI and/or Wapiti Corp.), and the assets of the Bullmoose Project (held by CDI and/or Bullmoose Co.) for $2,000,000.

**19th Report, para. 39.**

24. In the Supplement to the Twentieth Report of the Monitor dated December 1, 2024 (the "**20th Report Supplement**"), the Monitor reported that it received notice from TMC on November 26, 2024, that TMC would be withdrawing its offer.

**20th Report Supplement, para. 6.**

25. On November 25, 2024, the Monitor, among others, received a letter from West Moberly First Nations ("**West Moberly**") that TMC had been acting on its behalf with respect to its attempt to acquire the assets associated with the Bullmoose Project and the Wapiti Project. Further, West Moberly was prepared to offer $2.2 million for these assets. In this regard, West Moberly submitted a purchase agreement substantially in the same form as the TMC Offer (the "**West Moberly Offer**").

**20th Report Supplement, paras. 21–22.**

26. As noted by the Monitor, the West Moberly Offer is $550,000 higher than the purchase price under the DIP Lender Offer.

**20th Report Supplement, para. 27.**

27. In summary, as it relates to the sale of the assets associated with the Bullmoose Project and the Wapiti Project, as generally identified in the DIP Lender Offer and the West Moberly Offer (collectively, the "**Assets**"), there are two offers before the Court:

(a) the DIP Lender Offer, in the amount of $1,650,000; and

(b) the West Moberly Offer, in the amount of $2,200,000.

## Part 5: LEGAL BASIS

### The highest offer should be approved because the primary factor is creditor recovery

28. The "primary interest to be considered by the Court is that of the creditors, and to see that the best possible price is obtained".

***Bank of Montreal v. Renuka Properties Inc.*, 2015 BCSC 2058 [*Renuka Properties*] at paras. 31(5), 42.**

29. In *Renuka Properties*, Justice Blok concluded:

> 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.

***Renuka Properties*, at para. 42.**

30. In this case, West Moberly is willing to pay approximately 33 percent more than the DIP Lender for the Assets on substantially the same terms. The West Moberly Offer is the best price for the Assets, and should be approved as it ensures the best recovery for creditors.

31. Such a substantial difference in sale price "tends to show that the sale process has failed to garner full market value for the assets", even if it is "difficult to discern an identifiable aspect of the sale process that would account for this disparity".

***Renuka Properties*, at para. 39.**

32. The West Moberly Offer, at $2,200,000, should lead the Court to conclude that the offer from the DIP Lender, at $1,650,000, is not "as good an offer as could be realistically expected."

***QRD (Willoughby) Holdings Inc. v. MCAP Financial Corp.*, 2024 BCCA 318 at para. 67.**

33. The West Moberly Offer is approximately 33 percent higher than the DIP Lender Offer. This discrepancy is substantial and the Court should consider and approve the West Moberly Offer as it will result in the best recovery for creditors.

**Section 36(3) of the *CCAA* weighs against approving the DIP Lender Offer**

34. As set out in Section 36(3) of the *CCAA*, in deciding whether to approve a sale of a debtor company's assets, 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.

***CCAA*, s. 36(3).**

35. The following factors weigh against approving the DIP Lender Offer:

(a) The Monitor has not filed with the Court a report stating that in their opinion the sale to the DIP Lender would be more beneficial to the creditors than a sale or disposition under a bankruptcy.

(b) The proposed sale to the DIP Lender would negatively effect creditors, as compared to the higher offer from West Moberly.

(c) The West Moberly Offer suggests the market value for the Assets is at least $2,200,000, and therefore the offer from the DIP Lender is not reasonable and fair.

36. In summary, the DIP Lender Offer is not in the best interests of creditors. Whereas, the West Moberly Offer would clearly be a better outcome for creditors.

**The Court cannot approve the DIP Lender Offer because of Section 36(4) of the *CCAA***

37. The DIP Lender is the spouse of the sole director of CDI, they each hold 50% of the shares of CDI. Further, the DIP Lender is one of two directors of Wapiti Corp. and the spouse of one of the directors of Bullmoose Co.

**4th Liu Affidavit, paras. 4, 6, 8.**

38. Pursuant to Section 36(5) of the *CCAA*, the DIP Lender is a person who is related to the Petitioners.

***CCAA*, s. 36(5).**

39. As a result, the Court must consider Section 36(4) of the *CCAA* in order to approve the DIP Lender Offer.

40. Section 36(4) states:

> **(4)** If a debtor company proposes a sale or disposition of assets to a person who is related to the company, the court may approve the sale after considering the factors in subsection (3) 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.

***CCAA*, s. 36(4).**

41. When addressing a potential related party sale, Section 36(4) is mandatory. A related party sale may only be approved if the Section 36(4) considerations are met in the circumstances.

**_McEwan Enterprises Inc._, 2021 ONSC 6878 at paras. 51, 66.**

42. In other words, Section 36(4) functions as a complete bar to approving a sale to a related party in *CCAA* proceedings, unless there were good faith efforts to sell to unrelated persons and the consideration offered by the related party is superior to any other offer made in accordance with the process leading to the proposed sale.

43. Section 36(4) of the *CCAA* places related party sales on a different footing, and further emphasizes that such sales should result in the highest possible recovery for creditors.

44. Section 36(4) is intended to prevent potential abuses that can arise with related party sales, which include a related party purchasing assets "at a discount out of the estate" and the current owner(s) of the assets being permitted to continue "their original business basically unaffected while creditors are left unpaid."

**_Canwest Global Communications Corp. (Re)_, 2009 CanLII 63368 (ON SC) at para. 34.**

45. If the Court approves the DIP Lender Offer, the outcome would result in the above concerns materializing. Specifically:

(a) the DIP Lender, as a person who is related to the Petitioners, would be permitted to purchase the Assets at a discount compared to the West Moberly Offer;

(b) the current owners of the Assets would be permitted to continue their original business basically unaffected; and

(c) as it relates to potential realization from the Assets, creditors would be left unpaid.

46. It is clear that the consideration to be received under the DIP Lender Offer is not superior to the West Moberly Offer.

47. The primary question before the Court is whether the West Moberly Offer was "made in accordance with the process leading to the proposed sale".

**_CCAA_, s. 36(4)(b).**

48. The Court should not take a restrictive view of the "process leading to the proposed sale". The Court ought to consider the West Moberly Offer for two primary reasons:

(a) The West Moberly Offer is approximately 33% higher than the offer from the DIP Lender. This is a substantial difference which shows that "the sale process has failed to garner full market value for the assets".

***Renuka Properties*, at para. 39.**

(b) The process leading to the proposed sale has evolved significantly since the Offer Deadline. Among other things:

(i) neither of the offers received by the Offer Deadline were capable of being approved on September 17, 2024, and even the DIP Lender Offer has been revised since that hearing;

(ii) two petitioners (Wapiti Corp. and Bullmoose Co.) have been added to the proceeding since the Offer Deadline;

(iii) the Binding Offer Order did not stipulate that the Offer Deadline was a final deadline nor that CDI must seek approval of an offer at the hearing on September 17, 2024; and

(iv) the Binding Offer Order did not include any of the specificity that was included in the Modified SISP Order with respect to binding offers.

49. If the Court considers the West Moberly Offer, it is clearly superior and the Court cannot approve the DIP Lender Offer.

50. Given all of the circumstances, the Court should approve the West Moberly Offer.

**Part 6: MATERIAL TO BE RELIED ON**

1. Initial Order, granted June 3, 2022;

2. ARIO, granted June 9, 2022;

3. Initial SISP Order, granted August 18, 2022;

4. Modified SISP Order, granted November 30, 2022;

5. Binding Offer Order, granted August 30, 2024;

6. Affidavit #4 of Naishun Liu, made October 8, 2024;

7. Affidavit #1 of Xiao Liu, made October 15, 2024;

8. Seventeenth Report of the Monitor, dated September 16, 2024;

9. Eighteenth Report of the Monitor, dated October 8, 2024;

10. Nineteenth Report of the Monitor, dated October 16, 2024;

11. Twentieth Report of the Monitor, dated November 18, 2024;

12. Supplement to the Twentieth Report of the Monitor, dated December 1, 2024; and

13. Twenty First Report of the Monitor, dated December 12, 2024.

☒ The Application Respondent has filed in this proceeding a document that contains the Application Respondent's address for service.

Date: 08/JAN/2025

Signature of Eamonn Watson
Lawyer for Application Respondent