

**ENTERED**

COURT FILE NUMBER

2001-05630

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

COM  
Oct 30 2020  
J. Eidsvik

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

EIGHTH 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.

**October 29, 2020**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

**MONITOR**

FTI Consulting Canada Inc.  
1610, 520, 5th Ave S.W.  
Calgary, AB T2P 3R7  
Deryck Helkaa / Tom Powell  
Telephone: (403) 454-6031 / (604) 551-9881  
Fax: (403) 232-6116  
E-mail: [deryck.helkaa@fticonsulting.com](mailto:deryck.helkaa@fticonsulting.com)  
E-mail: [tom.powell@fticonsulting.com](mailto:tom.powell@fticonsulting.com)

**COUNSEL**

Bennett Jones LLP  
4500 Bankers Hall East, 855 - 2nd Street SW  
Calgary, AB, T2P 4K7  
Christopher Simard / Kelsey Meyer  
Telephone: (403) 298-4485 / (403) 298-3323  
Fax: (403) 265-7219  
E-mail: [simardc@bennettjones.com](mailto:simardc@bennettjones.com) / [meyerk@bennettjones.com](mailto:meyerk@bennettjones.com)

**EIGHTH REPORT OF THE MONITOR**

**Table of Contents**

INTRODUCTION ..... 3  
TERMS OF REFERENCE ..... 6  
REALIZATION PROCESS ORDER ..... 7  
SALE PROCEDURE FOR DDMI COLLATERAL ..... 9  
MONITOR’S COMMENTS..... 11

## INTRODUCTION

1. On April 22, 2020, Dominion Diamond Mines ULC (“**DDM**”), 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**”) commencing proceedings (the “**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended. On September 18, 2020, Dominion Diamond Marketing Corporation was added as an applicant in the CCAA Proceedings.
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 November 7, 2020 by an order granted by this Honourable Court on September 18, 2020.
3. DDM 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**”) which is a subsidiary of Rio Tinto plc.
4. Pursuant to the Diavik JVA, DDMI holds a sixty percent (60%) interest in, and DDM holds a forty percent (40%) interest in a mine site and various surrounding exploration properties (collectively, the “**Diavik Mine**”) located approximately 300 kilometers northeast of Yellowknife, Northwest Territories. DDMI is the manager of the Diavik Mine and is responsible for all day to day Operations (as defined in the Diavik JVA).
5. On May 15, 2020, this Honourable Court granted Amendments to the May 1, 2020 Amended and Restated Initial Order (the “**ARIO**”) including, among other things, the following relief:

- a. nothing shall prevent DDMI from making Diavik JVA Cover Payments as defined and contemplated under section 9.4 of the Diavik JVA on an ongoing basis and in accordance with the terms and conditions therein; and
- b. DDMI, in its capacity as manager under the Diavik JVA, is authorized to hold at the Diavik Production Splitting Facility in Yellowknife, Northwest Territories (the “PSF”) DDM’s share of production from the Diavik Mine scheduled for delivery to DDM on May 20, 2020 (the “**May 20 Dominion Products**”) as referenced in Confidential Exhibit #5 to the Affidavit of Kristal Kaye, sworn May 6, 2020, in trust pending further order of this Honourable Court, subject to the following conditions:
  - i. DDMI shall segregate the May 20 Dominion Products from DDMI’s share of production from the Diavik Mine and provide adequate safeguarding of, and insurance coverage for, the May 20 Dominion Products;
  - ii. DDMI shall not sell, transfer or otherwise deal with, or dispose of the May 20 Dominion Products;
  - iii. DDMI shall provide DDM and the Monitor with reporting and records on the May 20 Dominion Products as may be requested by DDM or the Monitor; and
  - iv. DDMI shall permit DDM and the Monitor reasonable access to attend at the PSF and audit or inspect the May 20 Dominion Products.
- c. the order was made on a temporary, without prejudice basis pending determination by this Court whether the next scheduled deliveries of DDM’s proportionate share of diamonds produced from the Diavik Mine as set out on the Delivery Schedule are to remain at the PSF or whether they are to be delivered to by DDMI to Dominion.

6. On June 19, 2020 this Honourable Court granted an order (the “**SARIO**”) which provides for further Amendments to the ARIIO including, among other things, the following relief:
  - a. Paragraph 16 of the SARIO was amended to include the terms added in the May 15, 2020 order to further include all Dominion Products (the “**DDMI Collateral**”), not just limited to the May 20 Dominion Products; and
  - b. on the happening of any of the following dates, events or occurrences, or with leave of the Court, DDMI is entitled to apply to the Honourable Court for an order allowing it to exercise rights and remedies as against the Dominion Products (as defined in the SARIO):
    - i. the date that the within CCAA proceedings are terminated;
    - ii. any time after the Phase 1 Bid Deadline, when there is no Phase 1 Qualified Bid or Phase 2 Qualified Bid which includes the assets owned by Dominion Diamond in the Diavik JVA; and
    - iii. November 1, 2020.
7. On September 25, 2020 this Honourable Court granted an order suspending the operation of paragraph 16 of the SARIO with respect to the requirement implicit in the SARIO that DDMI deliver the DDMI Collateral to DDM to the extent that the DICAN Canada valuation exceeds the amount outstanding for Cover Payments. To date, that order has not been entered or filed with the Court.
8. On October 19, 2020 DDMI filed an application for an order (the “**Realization Process Order**”) that provides for, among other things, the following:
  - a. approving a process (the “**Realization Process**”) for the realization upon Dominion's share of production from the Diavik Mine (the “**DDMI Collateral**”)

and authorizing DDMI to take the steps necessary to implement the Realization Process; and

- b. continuing the suspension of paragraph 16 of the SARIO.
9. The purpose of this Eighth Report is to provide this Honourable Court and the Applicants' stakeholders with information and the Monitor's comments with respect to DDMI's application for the Realization Process Order.

## **TERMS OF REFERENCE**

10. 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**").
11. 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.
12. 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.
13. 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.
14. All capitalized terms that are used in this Eighth Report but not defined herein are intended to bear their meanings as defined in the Monitor's prior Reports.
15. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

## **REALIZATION PROCESS ORDER**

16. DDMI is seeking the Realization Process in order to govern the disposition of DDM's share of production from the Diavik Diamond Mine.

17. The Realization Process Order being sought by DDMI would provide it with authorization to take any of the following actions in respect of the DDMI Collateral, at all times acting in a commercially reasonable manner:

- a. transport DDMI Collateral from the PSF to Antwerp, Belgium;
- b. engage third party experts 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;
- d. sell, transfer and convey the DDMI Collateral to any person in accordance with the Sale Procedure;
- e. receive and collect all monies and accounts now owed or hereafter owing to DDM in respect of the DDMI Collateral on DDM's behalf;
- f. disburse all monies and accounts that are received and collected in respect of the DDMI Collateral in accordance with their respective priorities; and
- g. take any steps reasonably incidental to carrying out the Sale Procedure and shall be exclusively authorized and empowered to do so, to the exclusion of all other persons, including DDM.

18. The Realization Process also includes the following key commercial terms:

- a. upon disposition of any DDMI Collateral, it would vest in the purchaser free and clear of any encumbrances;

- b. DDMI would be required to report to DDM, the Monitor and the administrative agent (the “**Agent**”) to the senior secured first lien lenders (the “**First Lien Lenders**”) on the Realization Process on a monthly basis and when otherwise reasonably requested;
- c. any reporting to the Agent would be deemed to be made without any representation or warranty from DDMI to the Agent or the First Lien Lenders and DDMI would not have any liability to any person resulting from such parties’ use of such reporting;
- d. any sale of the DDMI Collateral by auction or direct to a customer sale in a manner generally consistent with past practice or as authorized by this Monetization Process would be deemed to be commercially reasonable;
- e. other than liabilities that DDMI expressly agrees to incur in writing in respect of any Sale, DDMI would have no liability to any person with respect to any Sale; and
- f. no person would be able to sue or otherwise take any action against DDMI with respect to such Sale except for:
  - i. claims that DDMI expressly agrees to incur in writing in respect of any Sale; or
  - ii. claims that DDMI’s conduct with respect to the process and manner of such Sale constituted gross negligence or willful misconduct or did not comply with the provisions of the Sales Procedure.

19. DDM would continue to have title to the DDMI Collateral throughout the Realization Process until completion of a sale and the proceeds of sale.

20. The proceeds resulting from any sale would be distributed by DDMI as follows:



- a. first, towards all taxes or royalties applicable to DDMI Collateral that rank in priority to the security provided for under the Diavik JVA;
- b. second, to fees and expenses incurred by or on behalf of DDMI in the implementation of the Realization Process including a fee of 2.5% of the gross value of any sale payable to DDMI in relation to handling, sorting, selling and collecting proceeds;
- c. third, to DDMI, in satisfaction of outstanding cover payments and interest thereon including reasonable legal fees and other costs incurred by DDMI in collecting payment of such indebtedness and enforcing such security interest;
- d. fourth, to the Agent in satisfaction of all indebtedness, liabilities and obligations owing by DDM to the First Lien Lenders;
- e. fifth, to Wilmington Trust, National Association, as trustee of the senior secured second lien notes payable; and
- f. sixth, to DDM to be distributed in accordance with a distribution order or other order of the Court.

## **SALE PROCEDURE FOR DDMI COLLATERAL**

21. The Realization Process includes a prescribed procedure for selling DDMI Collateral (the “**Sale Procedure**”). Highlights of the Sale Procedure are summarized as follows:

- a. product must be cleaned and sorted under a safe and secure operation;
- b. the timing of sales must as much as possible be aligned to market cycles;
- c. DDMI would have optionality of sales channels including supply contracts, auctions, tenders and negotiated spot sales; and

- d. a professional and well-equipped team would execute the Sale Procedure and collect the proceeds.

22. To the extent that DDMI agrees to exercise its rights under the Realization Process, DDMI would:

- a. handle the DDMI Collateral in a commercially reasonable manner and apply the same processes, audits and analysis as such persons utilize with any equivalent DDMI Production;
- b. insure, import, clean, sort, value and sell the DDMI Collateral using their existing infrastructure;
- c. sort and value the DDMI Collateral using the same sorting product line, Diavik Mine samples and pricebook that is applied to any equivalent DDMI production;
- d. phase the DDMI Collateral over the Q4 2020 and Q1/Q2 2021 periods to 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; and
- e. sell all diamonds that are subject to being split at the Antwerp Facility under the current Joint Venture Splitting Protocol.

23. The Sales Procedures prescribe certain reporting requirements including:

- a. providing DDM, the Monitor and the Agent with detailed sales results;
- b. providing the Monitor with copies of actual sales invoices including auction logs and itemized lists of fee deductions;

- c. permitting an accounting firm to audit the records and information, at DDM's sole cost;
- d. permitting DDM to have periodic access to the DDMI Collateral; and
- e. facilitating quarterly or half-yearly meetings with DDM, the Monitor and the Agent to review sales history and related matters.

## **MONITOR'S COMMENTS**

24. The Monitor is generally supportive of the DDMI Collateral being monetized and distributed in accordance with entitlement, as the Cover Payments owed by DDM to DDMI are material, totaling approximately US \$83.2 Million to date.
25. The Monitor understands from its review of materials served upon the Service List in relation to this Application that the views of the Applicants and the First Lien Lenders with respect to the appropriate terms of a Realization Process differed fundamentally from those of DDMI in a number of respects. However, through the course of extensive negotiations between their respective advisors since the filing of the various materials and continuing through the evening before the application, the Monitor understands that DDMI, the Applicants and the First Lien Lenders have considerably narrowed the issues in dispute between them<sup>1</sup>. The remaining terms of the Realization Process that stakeholders are in disagreement on include (but may not be limited to) the following:
- a. the valuation of the diamond production that should be subject to a monetization process and whether DDMI should deliver the DDMI Collateral to DDM to the extent that the DICAN Canada valuation exceeds the amount outstanding for Cover Payments;

---

<sup>1</sup> Subject to approval of the advisors' respective clients.

- b. the 2.5% handling, sorting, sales and cash collection fee proposed to be charged by DDMI (the "**DDMI Fee**"), and opposing evidence of Dominion with respect to the amount of that DDMI Fee;
- c. commercial issues with respect to Schedule "B" to the monetization process, and specifically, the form thereof; and
- d. the form of reporting to be provided to the First Lien Lenders by DDMI;

(collectively, the "**Issues**").

26. The Monitor is not advocating for or against the relief sought by DDMI, and understands that the various stakeholders will present legal arguments in relation to the Issues at the hearing before the Court on October 30<sup>th</sup>. However, the Monitor makes the following practical and factual observations, in an effort to assist the Court:


- a. the Monitor's legal counsel has prepared security opinions on DDMI's security and determined it to be valid and enforceable, subject to standard qualifications;
- b. there is conflicting evidence and conflicting positions of the parties with respect to the method of valuation of the DDMI Collateral, and in particular, the accuracy or appropriateness of the DICAN valuation and whether DDMI should deliver the DDMI Collateral to DDM to the extent that the DICAN Canada valuation exceeds the amount outstanding for Cover Payments;
- c. there is conflicting evidence with respect to the DDMI Fee (which DDMI addresses at para. 9(f) of the Affidavit #4 of Thomas Croese sworn October 19, 2020), including in particular evidence at paras. 59 to 61 of the Affidavit of Kristal Kaye sworn October 28, 2020;

- d. DDMI and Dominion have not reached agreement on the commercial matter in dispute on the form of Schedule "B" to the monetization process (which sets out a template for ongoing reporting); and
- e. the interests of stakeholders such as the royalty interests of the Government of the Northwest Territories and Sandstorm Gold Ltd. must also be considered.

\*\*\*\*\*

All of which is respectfully submitted this 29<sup>th</sup> day of October, 2020.

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



Deryck Helkaa  
Senior Managing Director



Tom Powell  
Senior Managing Director