CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

COURT OF APPEAL

No: CSM 500-11-048114-157
CA: 500-09-

IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF:

BLOOM LAKE GENERAL PARTNER LIMITED *ET AL.*
Respondents / RESPONDENTS

-and-

THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP *ET AL.*
Mises-en-cause

-and-

FTI CONSULTING CANADA INC.
Monitor

-and-

9201955 CANADA INC.
Mise-en-cause

-and-

8901341 CANADA INC.

-and-

CANADIAN DEVELOPMENT AND MARKETING CORPORATION
Interveners / APPELLANTS

MOTION FOR LEAVE TO APPEAL AND MOTION TO SUSPEND PROVISIONAL EXECUTION
(Section 13 of the *Companies' Creditors Arrangement Act*, RSC 1985 c C-36 ("*CCAA*") and Articles 494 and 550 *CCP*)

TO ONE OF THE HONOURABLE JUDGES OF THE COURT OF APPEAL SITING IN AND FOR THE DISTRICT OF MONTREAL, APPELLANTS 8901341 CANADA INC. AND CANADIAN DEVELOPMENT AND MARKETING CORPORATION RESPECTFULLY SUBMIT AS FOLLOWS:

I. INTRODUCTION

1. The Appellants seek leave to appeal from the judgment rendered on April 27, 2015 by the Honourable Stephen W. Hamilton, JSC (the "**Judgment**"), granting the Respondents' Amended Motion for the Issuance of an Approval and Vesting Order with Respect to the Sale of the Chromite Shares (the "**Motion**"), whereby the Court committed an error of law in concluding that notwithstanding the significant flaws in the bidding process in connection with the sale of the shares, the bidding process was nonetheless valid and authorized and directed the Debtor CQIM (defined below) to complete the sale transaction in respect of the shares with Noront (as defined below) notwithstanding Noront's blatant disregard of the rules of the bidding process put in place by the Respondents and approved by the Monitor, the whole as appears from the Judgment, copy of which is disclosed herewith as **Exhibit R-1**;

2. The hearing of the Motion lasted all of Friday, April 24, 2015;

II. BACKGROUND

3. On January 27, 2015, this Honourable Court issued an Initial Order pursuant to the *CCAA*, in respect of the Respondents (as amended, the "**Initial Order**"). FTI Consulting Canada Inc. was appointed as monitor to the Respondents (the "**Monitor**");

4. 8901341 is a newly formed corporation and is the wholly owned subsidiary of Canadian Development and Marketing Corportation (collectively, the "**Appellants**") Mr. Mohammad Al Zaibak is the sole director and officer of both Appellants;

5. Pursuant to the Motion, the Respondents were seeking approval of the Superior Court to sell all rights, title and interest in the Ring of Fire Shares (as defined in the Motion), referred to herein as the "**Chromite Assets**", the whole as appears from the Motion, copy of which is disclosed herewith as **Exhibit R-2**;

6. The Respondents and related parties engaged Moelis & Company as their financial advisor (the "**Financial Advisor**") for the sale of the Chromite Assets;

7. On March 16, 2015, Appellants presented its initial offer to Cliffs Greene B.V. ("**Cliffs Greene**"), Cliffs Netherlands B.V. ("**Cliffs Netherlands**") and Cliffs Québec Iron Mining ULC ("**CQIM**") to acquire the Chromite Assets (the "**Initial Offer**") (Cliffs Greene, Cliffs Netherlands and CQIM, collectively with certain Additional Sellers (as defined in the Initial Offer), are referred to below as "**Cliffs**").

8. The Initial Offer provided for, *inter alia*, an aggregate purchase price of $23 million ($21 million at closing with a balance of $2 million payable by no later than December 31, 2015), was subject to a 30-day due diligence period, and did not include any financing conditions;

9. On March 17, 2015, Cliffs advised Appellants that it had rejected the Initial Offer and was pursuing discussions with a third party;

10. On March 18, 2015, Appellants presented an amended offer to Cliffs which modified the Initial Offer (the "**Amended Initial Offer**") which provided for, *inter alia*, an aggregate purchase price of $23 million ($22 million at closing with a balance of $1 million payable by no later than December 31, 2015), reduced the due diligence period to 25 days and did not include any financing condition;

11. Other than as set forth above, the terms and conditions of the Amended Initial Offer were at least as favorable as the terms set forth in the Original Noront SPA, defined below;

12. The Amended Initial Offer was rejected by Cliffs;

13. On March 23, 2015 Cliffs and Noront publicly announced that they had entered into a share purchase agreement (the "**Original Noront SPA**"), which provided for the purchase by Noront of the Chromite Assets for a purchase price of US$20 million;

14. On or about April 2, 2015, Cliffs filed a *Motion for the issuance of an approval and vesting order with respect to the sale of the chromite shares* (the "**First Approval Motion**"), with the Superior Court (Commercial Division), seeking the Court's approval of the Original Noront SPA and related orders;

15. The Original Noront SPA included, *inter alia*, certain conditions precedent to closing in favor of Noront including, the closing of the financing required to fund the purchase price as well as, a requirement to obtain a key third party consent;

16. The Original Noront SPA included specific provisions regarding the consideration and treatment of unsolicited third party proposals for the Chromite Assets, the whole as described in more detail below;

17. In light of the provisions of the Original Noront SPA and the confirmation by the Respondents and the Monitor, as enunciated in the First Approval Motion and the Monitor's Third Report, to the effect that the Respondents could pursue and accept a Superior Proposal on April 13, 2015, representatives of Appellants met with representatives of Cliffs to present a revised offer (the "**April 13 Offer**");

18. The April 13 Offer was on the same terms and conditions as the Original Noront SPA, except that it provided for a purchase price of $23 million payable in cash at closing, a significantly higher deposit amount, did not include a financing condition and did not permit Cliffs to terminate the share purchase agreement in favor of a superior proposal;

19. In addition, Appellants also presented letters from its financial institutions confirming the availability of funds to pay the purchase price in full at closing;

20. The April 13 Offer included an expiry time of 5:00 p.m. (Cleveland time) on April 14, 2015;

21. To facilitate a quick transaction, Appellants provided an executed copy of a share purchase agreement reflecting the terms of the April 13 Offer;

22. A summary of the material terms of the April 13 Offer was prepared by counsel for the Respondents and communicated to Noront in accordance with the Original Noront SPA, as appears from the email from Respondents' counsel transmitting said summary, copy of which is disclosed herewith *en liasse* along with the summary as **Exhibit R-3**;

23. On April 13, 2015, four First Nations filed a Notice of Objection and Contestation of the Motion, which was amended on April 23, 2015 as two other First Nations joined the contestation. A copy of the Amended Notice of Objection and Contestation is disclosed herewith as **Exhibit R-4**;

24. During the evening of April 14, 2015 and after the expiry of the April 13 Offer, Mr. Carlo De Girolamo, a representative of the Financial Advisor, contacted Mr. Al Zaibak to advise him that Cliffs intended to run an auction, requesting that Appellants and Noront submit revised offers to Cliffs by 5:00 p.m. on April 15, 2015;

25. Very late in the evening of April 14, 2015, counsel for Respondents sent an email to counsel for Appellants, outlining a process for revised offers from Appellants and Noront (the "**Supplemental Bid Process**"), as appears from said email, copy of which is disclosed herewith as **Exhibit R-5**. The same email was also sent to Noront around the same time, as appears from the email to Noront, copy of which is disclosed herewith as **Exhibit R-6** (both emails collectively referred to herein as the "**April 14 Email**");

26. The April 14 Email confirmed that Cliffs had "determined in good faith and communicated to the Purchaser [*i.e.* Noront] after consultation with their outside legal counsel, financial advisors and the Monitor, that the [April 13 Offer] is, or could reasonably be expected to lead to, a Superior Proposal";

27. The April 14 Email set forth a process described as aiming to "promote a fair and efficient process in light of the pending Court hearing date for the approval of the sale of the Purchased Shares and the terms of the March 22 SPA";

28. The Supplemental Bid Process confirmed that Cliffs was seeking the "best and final offer" from each of Appellants and Noront and that bidders were permitted to remove the ability of Cliffs to terminate a share purchase agreement on the basis of a superior proposal (as had been permitted by section 7.1(d) of the Original Noront SPA);

29. The Supplemental Bid Process confirmed that final bids, in the form of an executed share purchase agreement, were to be received by 5:00 p.m. (Toronto time) on April 15, 2015;

30. While the Supplemental Bid Process did allow bidders to include a cover letter "*setting any additional considerations that the Bidder wishes to be considered in connection with its Final Bid*", it is also clearly stated that "*such cover letter should not amend or modify any of the terms and conditions contained in the executed SPA*";

31. During the afternoon of April 15, 2015, the Financial Advisor reached out to counsel for Appellants to confirm whether the April 13 Offer had expired or remained open for acceptance;

32. On a number of occasions starting at 12:51 PM on April 15, 2015, Noront sought an extension of the final bid deadline to 8 PM that evening, as appears from the correspondence disclosed herewith *en liasse* as **Exhibit R-7**.

33. This request was consistently refused, as the Monitor, its counsel, and counsel for the Respondents all professed that the integrity of the Supplemental Bid Process was paramount, as appears from the correspondence disclosed herewith *en liasse* as **Exhibit R-8**;

34. Given the uncertainty surrounding the entire process at this point and in order to avoid any argument relating to its failure to participate in this last minute process, prior to the 5:00 p.m. deadline set for the Supplemental Bid Process, Appellants submitted an amended offer to the Financial Advisor, the Monitor and Cliff's legal counsel (the "**Final Offer**"), copy of which is disclosed herewith as **Exhibit R-9**;

35. The Final Offer included a purchase price $25,275, 000, namely an increase of more than 25% over the purchase price contemplated in the Original Noront SPA;

36. The Final Offer was otherwise on substantially the same terms as the April 13 Offer (ie. no financing condition and no due diligence) and included an expiry time of 9:00 p.m. (Eastern time) on April 15, 2015;

37. While Appellants strictly complied with each condition set out in the Supplemental Bid Process, most importantly by submitting the Final Offer in advance of the 5 PM deadline on April 15, 2015, Noront did not abide by any of the terms of the Supplemental Bid Process;

38. Indeed, Noront submitted a draft bid, including an unsigned blacklined draft share purchase agreement, at 5 PM on April 15th, which it promised to finalize in the next hour, but did not do so for nearly four hours, as appears from correspondence from Noront to the Financial Advisor, copy of which is disclosed herewith *en liasse* as **Exhibit R-10**;

39. Contrary to the requirements of the Supplemental Bid Process, Noront's 5 PM bid:

    a) Did not include an executed share purchase agreement;

    b) Contained a cover letter that purported to modify the terms of the proposed share purchase agreement (ie that the revised offer was valid if and only if another offer was received in the Supplemental Bid Process);

    c) Contained a cover email that purported to modify the terms of the proposed share purchase agreement (ie that made it conditional upon third party approvals).

40. At 8:48 p.m. (Eastern time) on April 15, 2015, the Financial Advisor requested an extension of the expiry time of the Final Offer until 2:00 p.m. on April 16, 2015 stating that Cliffs required certain clarifications in respect of the offers received, as appears from the Financial Advisor's email, copy of which is disclosed herewith as **Exhibit R-11**;

41. In particular, the Financial Advisor requested additional documentation to support the financial resources of Appellants for the increased purchase price proposed in the Final Offer, despite the fact that there was no such condition contained in the April 14 Email setting out the Supplemental Bid Process;

42. At that time, however, the Financial Advisor and the Monitor had not even received Noront's final bid, which was only sent by Noront at 8:50 PM, as appears from Noront's email of that time, copy of which is included in a series of email exchanges between Noront's, its counsel, the Financial Advisor, disclosed herewith as **Exhibit R-12**;

43. The Financial Advisor sent a similar email to Noront to the one which was sent to Appellants at 8:48 PM, but only did so at 10:01 PM, as appears from the Financial Advisor's email, copy of which is disclosed herewith as **Exhibit R-13**;

44. As such, it is clear that the Financial Advisor was not entirely forthcoming with Appellants in its 8:48 PM email by failing to mention that Noront had not yet actually filed a final bid;

45. At the time where the Financial Advisor wrote to Appellants to request further time to assess the "bids", it did not even have the Noront Revised Offer in final approved form;

46. This situation is particularly troublesome considering that Noront requested an extension to the delay that very afternoon, which request was denied on recommendation of the Monitor, its counsel, and counsel for the Respondents, who were all concerned with the integrity of the process, as appears from Exhibits R-7 and R-8;

47. Rather than respecting this decision and playing by the rules, Noront acted as if an extension had been granted by filing a mere draft offer, subject to further third party approvals, before filing a signed version nearly four hours later, which incidentally is an even longer delay than was being sought by it in its extension request;

48. During the evening of April 15, 2015, counsel for Appellants provided a response to the Financial Advisor regarding, among other things, their financial capacity to fund the total purchase price and seeking clarifications as to why the Final Offer had not been accepted and why such a long period of time was necessary to decide upon two final offers which were to have been submitted on the same basis, as set out in the Supplemental Bid Process, the whole as appears from an email of 10:49 PM from counsel for Appellants, copy of which is included in a series of emails between counsel for Appellants and the Financial Advisor, disclosed herewith *en liasse* as **Exhibit R-14**;

49. The same evening, the Financial Advisor responded that the extension was at the request of Cliffs in order to exercise diligence in their review of the offers received, and to provide time to properly consult with the Financial Advisor and the Monitor, as appears from the email from the Financial Advisor of 00:21 AM on April 16, 2015, copy of which is included in Exhibit R-14;

50. On April 16, 2015, counsel for Appellants forwarded an updated letter to the Financial Advisor from Appellants' financial institution confirming the availability of funds to pay the purchase price under the Final Offer and also confirmed that the Final Offer remained

open for acceptance by Cliffs until 2:00 p.m. on April 16, 2015, the whole as appears from the email from counsel for Appellants of 11:19 A.M., copy of which is included in Exhibit R-14;

51. Appellants did not receive a reply on its Final Offer before 2 p.m.;

52. It should be noted that the Final Offer had the support of two of the most impacted First Nation communities, as appears from the cover email of the Final Offer, included in Exhibit R-9;

53. Late in the afternoon on April 16, 2015, and well after the expiry time requested by the Financial Advisor, the Financial Advisor sent a note to Mr. Al Zaibak stating that Cliffs determined that a revised offer submitted by Noront (the "**Noront Revised Offer**") represented a superior proposal, and determined to conclude a transaction with Noront, as appears from the email of the Financial Advisor, copy of which is disclosed herewith as **Exhibit R-15**;

54. The Financial Advisor had previously advised Noront that the Noront Revised Offer was accepted, as appears from an email of the Financial Advisor, copy of which is included in Exhibit R-12;

55. At a hearing before the Superior Court which took place on April 17, 2015, counsel for Cliffs stated that a new share purchase agreement in respect of the Noront Revised Offer had been executed at approximately 1:45 p.m. on April 17, 2015 (the "**Amended Noront SPA**");

56. It is apparent that the additional time could have only served one purpose, that is to allow Noront to perfect or improve any offer it may have submitted prior to the 5 pm deadline;

57. Cliffs served the Motion, seeking approval of the sale contemplated under the Amended Noront SPA, in the afternoon of April 18, 2015;

58. The Motion states that the purchase price payable under the Amended Noront SPA was "materially higher" than the purchase price under the Final Offer, but failed to disclose the purchase price to be paid by Noront on the basis that the purchase price was "commercially sensitive for [Noront] and "the Sellers" (as defined in the Motion Materials) who are not CCAA Parties Included as an exhibit to the Motion was an executed copy of the Amended Noront SPA, where the purchase price to be paid thereunder has been redacted;

59. In the First Approval Motion, the purchase price to be paid under the Original Noront SPA namely US$20,000,000 was fully disclosed in compliance with the principle of full disclosure in the context of *CCAA* proceedings;

60. On April 20, 2015, Appellants filed a Declaration of Intervention and Contestation of the Motion;

61. On April 23, 2015, three witnesses were examined in Toronto. These examinations established that there was no urgency to proceed with the sale of the Chromite Assets

given that there was no significant carrying costs for the Respondents with respect to these assets given that only nominal fees to maintain the validity of the mining claims were required;

62. Immediately prior to the hearing on April 24, 2015, counsel for the Debtor remitted partially unredacted documents to counsel for the Appellants which disclosed the purchase price payable under the Amended Noront SPA, namely the sum of US$27,500,000.

III. FLAWED AND UNFAIR SALE PROCESS

The Flawed Process

63. As appears from the foregoing, the sales process followed by the Respondents in respect of the Chromite Assets was flawed in many regards and particularly unfair in its treatment of all offers submitted by Appellants;

64. It is clear from the significant increase in purchase price both prior to and following the filing of Original Noront SPA that the Chromite Assets should have been the object of a duly endorsed court approved sale process in order to ensure a fair and transparent process and to maximize the return for the creditors;

Events following the April 13 Offer

65. More importantly, Appellants take particular exception to events that followed the April 13 Offer and to the particularly flawed process that ensued;

66. Notwithstanding the superiority of the April 13 Offer, Cliffs did not communicate with Appellants in any manner until after the bid expiry time, at which time the Financial Advisor and Cliffs' legal advisors informed Appellants about the Supplemental Bid Process;

67. The Supplemental Bid Process was provided to Appellants late in the evening on April 14, 2015 by the April 14 Email, Exhibit R-5, with a deadline of less than 24 hours to submit revised bids;

68. The Appellants nonetheless complied with every step of the Supplemental Bid Process whereas Noront did not;

69. Upon receipt of the Noront Revised Offer at 5 PM on April 15th, the Respondents and the Monitor should have concluded that it was not compliant with the clear terms of the Supplemental Bid Process (as set out in the April 14 Email, Exhibit R-5) and should have declared that the Final Offer was the Superior Proposal, the whole in accordance with the terms of the Supplemental Bid Process;

70. Failure to do so is clearly contrary to the imperatives of fairness and transparency set out in *Mecachrome Canada Inc. (In the matter of the plan of compromise or arrangement of) v Ernst & Young Inc.*, 2009 QCCS 6355 [*Mecachrome*] and *Ivaco Inc., Re* (2004), 3 CBR (5th) 33 (Ont Sup Ct) [*Ivaco*];

71. *Ivaco* is particularly clear that a sales process cannot be structured in such a way that confers a benefit over one party to the detriment of another, yet that is exactly what has been done in this instance;

72. On the contrary, it was incumbent on Cliffs and the Monitor to respect the rules that they had set and run a fair process for all which would have required Cliffs to ensure that Appellants and all interested parties be treated fairly;

73. At the April 17, 2015 hearing, Cliffs advised the Superior Court that the terms of the Amended Noront SPA provided that an approval order had to be obtained from the Superior Court no later than April 27, 2015, only five clear business days away;

74. The hearing on the Motion was postponed to April 24, 2014;

75. Given the terms of the Initial Order, it meant that if Appellants or any other party wanted to object, it had to file its contestation the very next business day;

76. This artificial urgency was manufactured by Noront to attempt to place the Court before a *fait accompli* and curtail any debate;

77. Indeed, the April 27th deadline in the Noront Revised Offer was arbitrary, and only designed to limit debate on the approval of the transaction;

78. First, the Noront Revised Offer provided for an April 20th deadline, which the Financial Advisor urged Noront to extend;

79. In response, Noront arbitrarily set the deadline for expiry of the Noront Revised Offer to the very next business day following the court hearing on the Motion, namely, April 27th;

80. Inexplicably, despite Noront's capricious inflexibility and disregard for the integrity of the process, and despite the Financial Advisor stating that the reasonableness of Noront's conditions would form part of the assessment of the bids, the Noront Revised Offer was still accepted;

81. In light of the deficiencies in the Sales Process and Supplemental Bid Process, the criteria set out in section 36 of the *CCAA* were not satisfied;

82. The process leading to the proposed sale of the Chromite Assets to Noront was not reasonable in the circumstances since it did not fairly treat all parties seeking to participate in the Sales Process;

IV. THE JUDGMENT APPEALED FROM

83. Notwithstanding these significant and inexcusable shortcomings in the Sales Process and the Supplemental Bid Process, and the way in which the Appellants' rights were disregarded throughout, the judge of first instance granted the Motion, and accordingly sanctioned the conduct of the Respondents, the Monitor and the Financial Advisor in respect of, *inter alia*, the Supplemental Bid Process;

84. In doing so, the judge of first instance, while accurately reproducing the criteria that was to guide his assessment, failed to apply said criteria in any meaningful way, therefore committing an error of law;

85. Most significantly, the judge of first instance failed to apply the teachings of Gascon JSC in *Mecachrome*, were he held that *CCAA* proceedings require the Respondents and the Monitor "*to satisfy the Court that they have proceeded in a manner where the transparency, integrity, credibility and fairness of the process is beyond reproach*";

86. The judge in first instance also failed to consider, despite having identified the criteria in question, "*whether there has been unfairness in the working out of the process*", as required by the Ontario Court of Appeal decision in *Royal Bank of Canada v Soundair Corp.* (1991), 4 OR (3d) 1;

87. More particularly, the judge in first instance has erred in law by ignoring, for all intents and purposes, the fact that the Supplemental Bid Process, already unjustly stacked against the Appellants, was not even followed, despite the fact that its conditions were clear and known by Appellants and Noront, which were supposed to abide by the same rules;

88. By doing so, the judge in first instance has approved a manifestly unfair Sales Process, in unjustified defiance of the applicable case law;

V. LEAVE TO APPEAL OUGHT TO BE GRANTED IN THE PRESENT CIRCUMSTANCES

89. The four factors to be considered by this Court in deciding whether to grant leave to appeal are as follows:

a) Whether the point on appeal is of significance to the practice;

b) Whether the point raised is of significance to the action itself;

c) Whether the appeal is *prima facie* meritorious or, on the other hand, whether it is frivolous; and,

d) Whether the appeal will unduly hinder the progress of the action.

90. None of the factors pose any difficulties in the present circumstances, such that it would be manifestly unjust to deny leave to appeal to the Appellants, just as it would deprive the *CCAA* practice of the wisdom of this Honourable Court on the important issues that are raised by this appeal;

91. Although there is case law regarding the fairness of sales processes in the *CCAA* context, there is no case law on the issue of whether a Monitor is entitled to endorse the acceptance by a *CCAA* debtor of bids that are not strictly compliant with a clearly defined bidding process, an issue which is squarely raised by this appeal and which is of significance to the practice;

92. The Superior Court of Québec has condoned an unfair asset sale process to the prejudice of the Appellants and the creditors of the Debtor;

93. Indeed, how can creditors have confidence in the process leading to the realization of assets forming part of a debtor's patrimony if, as was the case here, bidders are favoured over others for undisclosed and arbitrary considerations, with such favours coming to light only as a result of contestation, and not through forthright disclosure by the Monitor, as an independent, impartial, officer of the Court?

94. As such, it is clear that this Court needs to reform the judgment of first instance, if only for the sake of the integrity, both functional and perceived, of sale processes under the *CCAA*;

95. As for the action, the significance of this appeal is plain – the creditors have been cheated out of a fair, efficient, transparent and fulsome process that has provided them with subpar recovery as it is undeniable that, if the appeal is successful, creditors will recover more;

96. Indeed, a new court-approved and court supervised process will allow for the participation of more bidders, including First Nations, and will likely result in a purchase price for the Chromite Assets in excess of $30,000,000.00, which process will take place within a reasonable timeframe that will cause no harm to the Respondents given that the Chromite Assets do not require any significant carrying costs to be incurred in the meantime;

97. With respect to the merits of the appeal, the case law is clear, and the ignorance of these precedents by the judge in first instance cannot be explained – the Sales Process was not fair, it was not transparent and it was not in the best interests of the creditors – the Sales Process must be restarted by this Honourable Court;

98. Indeed, the Noront bid at 5 PM on April 15th, was not compliant with the Supplemental Bid Process – the share purchase agreement was not signed and the cover letter and email contained conditions, including the requirement for third party approvals – the Appellants' Final Bid suffered from none of these deficiencies;

99. However, it must be noted that the Appellants, although clearly entitled to do so, did not at any time ask for the Court to approve its Final Bid but rather asked the Court to simply restart the process given the blatant flaw in the Superior Bid Process;

100. The Supplemental Bid Process was clear and should have been followed, as the Monitor and the Respondents initially decided to do by refusing Noront's request for an extension of the bid deadline on April 15th;

101. The Respondents and the Monitor had no further discretion after setting the terms of the Supplemental Bid Process in such a clear manner and it constitutes an error of law for the judge in first instance to have granted the Motion;

102. Finally, there is no issue with respect to hindering the advancement of the *CCAA* proceedings – this *CCAA* process is far from complete, there are other sales processes that are ongoing (which were put in place by the judge in first instance on April 17, 2015) and, frankly, the underlying assets at issue, mineral exploration rights, are not going

anywhere soon, and will be bought by someone, at a better price than that which was offered by Noront in the context of this fundamentally flawed Sales Process;

103. This appeal, and, if successful, the new court-supervised sale process, will not delay the *CCAA* proceedings and will cause no prejudice to the Respondents, given that there are no significant carrying costs for the Chromite Assets;

VI. A STAY OF PROVISIONAL EXECUTION IS WARRANTED

104. Given the utter lack of urgency in the present circumstances, it is surprising that the judge in first instance granted the exceptional remedy of provisional execution notwithstanding appeal, which should therefore be suspended pending this appeal;

105. If leave to appeal is granted, it necessarily follows that there is a serious issue to be tried and the first branch of the test for a stay is met;

106. As for the second branch, irreparable harm, the assets in question are speculative mineral exploration rights – whether or not they will ultimately be worth something is impossible to determine, and therefore the Appellants are not able to quantify their loss as a result of the irremediably flawed sales process;

107. Finally, as concerns the balance of convenience, this factor certainly favors the Appellants. Noront has not advanced a single argument as to why rapid ownership of these assets is required and for the Respondents and Creditors, the significant interest these assets have attracted are clear signs that a proper sales process, yielding greater proceeds, is certainly in their interest;

108. If a stay is not granted, it is likely that the sale of the Chromite Assets to Noront will close, and Appellants will be irreparably harmed;

VII. THE DELAYS FOR SERVICE, FILING AND PRESENTING THIS MOTION SHOULD BE ABRIDGED

109. Given that the sale of the Chormite Assets to Noront is imminent, pursuant to the terms of the April 17th Share Purchase Agreement, the present Motion must be heard immediately by this Honourable Court, and the normal delays for service, filing and presentation of a Motion for Leave to Appeal must be abridged;

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the present motion;

ABRIDGE the delays for service, filing and presenting the Appellants' Motion for Leave to Appeal and Motion to Suspend Provisional Execution;

AUTHORIZE the Appellants to appeal from the judgment issued by the Honourable Stephen W. Hamilton, JSC on April 27, 2015, granting the Motion to Approve the Sales of the Chromite Assets;

SUSPEND the Order of provisional execution notwithstanding appeal contained in the judgment issued by the Honourable Stephen W. Hamilton, JSC on April 27, 2015, granting the Motion to Approve the Sales of the Chromite Assets, until such time as judgment has been rendered on the present appeal;

AT THE APPROPRIATE TIME AND PLACE, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the appeal of the Appellants, with costs;

DECLARE that the Sale Process for the Chromite Assets has been irreparably flawed and is therefore null and void;

DISMISS the Respondents' Amended motion for the issuance of an approval and vesting order with respect to the sale of the chromite shares;

ORDER the Respondents' to submit the terms and conditions of a new sales process for the Chromite Assets, acceptable to the Monitor, to the Superior Court for approval within 5 business days of the order to be rendered;

110. **THE WHOLE** with costs against the Respondents.

Montréal, April 27, 2015.

Osler Hoskin & Harcourt

OSLER, HOSKIN & HARCOURT LLP
Attorneys for 8901341 Canada Inc. and Canadian Development and Marketing Corporation

NOTICE OF PRESENTATION

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Mtre. Guy Turner

TAKE NOTICE that the attached *Motion for leave to appeal and Motion to suspend provisional execution* will be presented for hearing and allowance before one of the honourable judges of the Court of Appeal, sitting in and for the district of Montréal on **April 28, 2015** at 9:30 a.m. or so soon thereafter as counsel may be heard in Room RC-18 of the Édifice Ernest-Cormier, located at 100 Notre-Dame Street East, Montréal, Québec, H2Y 4B6.

Montréal, April 27, 2015.

Osler, Hoskin & Harcourt

OSLER, HOSKIN & HARCOURT LLP
Attorneys for 8901341 Canada Inc. and Canadian Development and Marketing Corporation

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

COURT OF APPEAL

No: CSM 500-11-048114-157
CA: 500-09-

IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF:

BLOOM LAKE GENERAL PARTNER LIMITED *ET AL.*
Debtors / RESPONDENTS

-and-

THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP *ET AL.*
Mises-en-cause

-and-

FTI CONSULTING CANADA INC.
Monitor

-and-

9201955 CANADA INC.
Mise-en-cause

-and-

8901341 CANADA INC.

-and-

CANADIAN DEVELOPMENT AND MARKETING CORPORATION
Interveners / APPELLANTS

LIST OF EXHIBITS

(MOTION FOR LEAVE TO APPEAL AND MOTION TO SUSPEND PROVISIONAL EXECUTION)

Exhibit R-1:	Copy of the judgment rendered on April 27, 2015 by the Honourable Stephen W. Hamilton, JSC;
Exhibit R-2:	Copy of the Amended Motion for the Issuance of an Approval and Vesting Order with Respect to the Sale of the Chromite Shares;
Exhibit R-3:	Copy of the email from Respondents' counsel enclosing summary of the material terms of the April 13 Offer, *en liasse*;

Exhibit R-4:	Copy of the Amended Notice of Objection and Contestation dated April 23, 2015;
Exhibit R-5:	Email to counsel for Appellants from counsel for Respondents, outlining the Supplemental Bid Process, dated April 14, 2015;
Exhibit R-6:	Email to Noront from counsel for Respondents, outlining the Supplemental Bid Process, dated April 14, 2015;
Exhibit R-7:	Correspondence starting at 12:51 PM on April 15, 2015 whereby Noront sought an extension of the final bid deadline to 8 PM, *en liasse*;
Exhibit R-8:	Correspondence between the Monitor, its counsel, and counsel for the Respondents regarding Noront's request for an extension of the final bid deadline to 8 PM, *en liasse*;
Exhibit R-9:	Copy of Appellants' Final Offer;
Exhibit R-10:	Copy of the correspondence from Noront enclosing draft bid at 5 PM on April 15, 2015, *en liasse*;
Exhibit R-11:	Copy of the Financial Advisor' email at 8:48 p.m. (Eastern time) on April 15, 2015 requesting an extension of the expiry time of the Final Offer until 2:00 p.m. on April 16, 2015;
Exhibit R-12:	Copy of Noront's email to the Financial Advisor and the Monitor sent at 8:50 PM on April 15, 2015 enclosing Noront's bid;
Exhibit R-13:	Copy of Financial Advisor's email to Noront at 10:01 PM on April 15, 2015;
Exhibit R-14:	Copy of a series of emails between counsel for the Appellants and the Financial Advisor, dated April 15, 2015 and April 16, 2015, *en liasse*;
Exhibit R-15:	Copy of the email of the Financial Advisor to Mr. Al Zaibak at 4:54 PM on April 16, 2015;

Montréal, April 27, 2015.

Osler Hoskin & Harcourt

OSLER, HOSKIN & HARCOURT LLP
Attorneys for 8901341 Canada Inc. and Canadian Development and Marketing Corporation

No : 500-09-
(CSM 500-11-048114-157)

COURT OF APPEAL
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF:

BLOOM LAKE GENERAL PARTNER LIMITED ET AL.

Respondents / RESPONDENTS

-and-

THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP ET AL.

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

-and-

9201955 CANADA INC.

Mise-en-cause

-and-

8901341 CANADA INC.
and
CANADIAN DEVELOPMENT AND MARKETING CORPORATION

Interveners / APPELLANTS

MOTION FOR LEAVE TO APPEAL AND MOTION TO SUSPEND PROVISIONAL EXECUTION
(Section 13 of the Companies' Creditors Arrangement Act, RSC 1985 c C-36 ("CCAA") and Articles 494 and 550 CCP)

ORIGINAL

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