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 amended notice of application of the petitioner filed May 5, 2025.

The application respondent estimates that the application will take two 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 ALL 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 NONE of Part 1 of the notice of application.

PART 4: FACTUAL BASIS

Canada Zhonghe Investment Ltd. Judgment and Proof of Claim

1. The application respondent, Canada Zhonghe Investment Ltd. ("Canada Zhonghe"), is a judgment creditor of the petitioner, Canadian Dehua International Mines Group Inc. ("CDI").

2. On or about August 30, 2021, default judgment was obtained by Canada Zhonghe against CDI in SCBC Action No. S214547 in the amount of $4,781,310.20 plus interest in the amount of $495,946.31 (totalling $5,277,256.51) and costs to be assessed (the "Canada Zhonghe Judgment").

3. The Canada Zhonghe Judgment arises out of a written promissory note signed by Naishun Liu on behalf of CDI in favour of Canada Zhonghe (the "Promissory Note").

4. CDI has never sought to set aside the Canada Zhonghe Judgment.

5. Pursuant to the Claims Process Order, on or about August 10, 2022, Canada Zhonghe submitted a Proof of Claim to the Monitor which was Proof of Claim was amended on May 4, 2023. The Monitor has not sent Canada Zhonghe a Notice of Revision or Disallowance and the Canada Zhonghe's Proof of Claim is therefore proven (para. 25 of the Claims Process Order).

CCAA Overview, Including Protracted and Unsuccessful Sale Process

6. The Twenty Sixth Report of the Monitor, filed April 10, 2025, sets out the history of this CCAA proceeding starting with the Initial Order which was pronounced almost three years ago on June 3, 2022 and the Amended and Restated Initial Order pronounced on June 9, 2022.

7. The Amended and Restated Initial Order was granted in the face of a bankruptcy application filed by the creditor, China Shougang International Trade & Engineering Corporation ("Shougang").

8. Almost three years ago – on or about August 18, 2022 – CDI obtained an order approving a sale and investment solicitation process for Wapiti Coking Coal Mines Corporation ("Wapiti") which was modified on November 30, 2022 to include Canadian Bullmoose Mines ("Bullmoose") and CDI's interest in HD Mining International Ltd. ("HD Mining"). CDI holds a 40% interest in HD Mining through its partial ownership interest in Canadian Dehua Lvliang Corp. ("CDLV"). CDI's interest in HD Mining relates to the Murray River Project.

9. On or about November 10, 2022, CDI entered into a non-binding letter of intent wherein the purchaser would acquire 60% of CDI's shares in Wapiti for $75M USD.[1]

10. The non-binding letter of intent for CDI's shares in Wapiti never transpired. Over one year later, the purchaser "shifted its focus to the Murray River Project" ("although still intent on completing the acquisition of the Wapiti shares") and signed a non-binding letter of intent, dated October 30, 2023, wherein the purchaser would acquire half of CDLV's shares in HD Mining for $100M USD which would result in an estimated after-tax sale proceeds to CDI of $35M.[2]

11. On November 25, 2023, CDI and the purchaser entered into a deposit agreement for $1M USD payable within 5 business days. The deposit was not paid.[3]

12. Subsequently, there was interest from a different purchaser acquiring all of the shares in HD Mining which would result in approximately $112M USD sale proceeds to CDI (pre-tax). An Equity Transfer Framework Agreement (the "Framework Agreement") was prepared which provided for a 40M RMB deposit being paid within 6 days of signing the agreement.[4]

[1] Fourth Report of the Monitor at paras. 26-33.
[2] Eighth Report of the Monitor at paras. 24-26.
[3] Ninth Report of the Monitor at paras. 32-34.
[4] Tenth Report of the Monitor at paras. 17-23.

13. The Framework Agreement was signed on February 28, 2024, yet, by May 6, 2024 no deposit was paid. The stay had been extended to April 26, 2024 on the basis that CDI would be able to confirm the receipt of the deposit.[5]

14. None of the foregoing transactions ever completed or even advanced to payment of a deposit.

15. Subsequently, on or about July 4, 2024, the Monitor received an offer to purchase CDI's interest in Wapiti and Bullmoose for $400,000 CDN from Tane Mahuta Capital.[6]

16. On September 6, 2024, the Monitor received a purchase agreement from Qu Bo Liu (a 50% shareholder of CDI and the wife of the sole officer and director of CDI) to purchase CDI's interest in Wapiti and Bullmoose for $1,650,000 CDN. The Monitor viewed the purchase agreement from Qu Bo Liu as the best available offer and supported the short extension of the stay so that CDI could add Wapiti and Bullmoose to the CCAA proceeding.[7]

17. Prior to court approval of the Qu Bo Liu purchase agreement, Tane Mahuta Capital submitted a purchase agreement for $2M CDN which resulted in a multi-day hearing on October 17-18, 21-22, 2024 and January 13, 14 and 20, 2025. Although the $2M offer from Tane Mahuta Capital would have resulted in a greater recovery to the estate, and had the support of the creditors (Canada Zhonghe and Shougang), CDI did not support the approval of the higher offer.

18. The protracted hearing ultimately resulted in a settlement whereby West Moberly First Nation purchased CDI's interest in Wapiti and Bullmoose for $2.45M CDN.[8]

19. To date, there has been no accounting of the distribution of the sale proceeds to the DIP lender, the Monitor/its counsel and CDI/its counsel. If the proposed sale process is permitted to proceed, there will be no meaningful recovery of funds to the estate from the sale because any funds paid to the estate will be depleted by the proposed sale process.

[5] Twelfth Report of the Monitor at paras. 35-38.
[6] Fourteenth Report of the Monitor at para. 9.
[7] Seventeenth Report of the Monitor at para. 30.
[8] Twenty Fourth Report of the Monitor at paras. 38-42.

20. On February 18, 2025, CDI obtained an extension of the stay to April 30, 2025. Additionally, the court ordered, *inter alia*:

    a) that a two day hearing shall be scheduled prior to the expiry of the stay of proceedings to address the CCAA proceeding generally and the Shougang bankruptcy application; and

    b) if CDI wished to seek further relief in the CCAA proceeding it file and serve its materials at least eight business days in advance of the hearing.

21. On April 8, 2025, CDI served a notice of application, returnable April 22, 2025, seeking:

    a) an extension of the stay to August 31, 2025;

    b) approval of a sales and investment solicitation process for the remaining property, assets and undertakings of CDI (with the exception of CDI's interest in Canadian Kailuan Dehua Mines Co., Ltd.); and

    c) approval of a stalking horse asset purchase agreement ("SHAPA") between CDI and Qu Bo Liu.

22. Despite the court order ordering CDI to file and serve its materials eight business days in advance of the hearing, and despite requests from counsel for Canada Zhonghe and counsel for Shougang, CDI did not provide the proposed SISP or SHAPA by the deadline set by the Court. In its application response filed April 17, 2025, Canada Zhonghe shared the Monitor's concerns that CDI and Qu Bo Liu, without a valid reasonable explanation, were not able to negotiate and serve the SISP and the SHAPA within the current stay extension.[9]

23. By order made on April 28, 2025, the court ordered, *inter alia,* that the Petitioner file the subject notice of application seeking further relief, and that the stay of proceedings be extended until August 15, 2025.

[9] Twenty Sixth Monitor's Report at para. 50.

Proposed Stalking Horse Bids

24. CDI and Qu Bo Liu assert that they negotiated the Murray River APA and the Other Assets APA on April 22, 2025.

25. The Murray River APA provides for a purchase price of $1,400,000 to be satisfied in part by a credit bid of $400,000, a deposit of $140,000, and the balance of $860,000 to be paid by certified cheque or bank draft.

26. The Remaining Assets APA provides for a purchase of $400,000 to be satisfied by a credit bid of up to $360,000, a deposit of $40,000, and the balance to be paid by certified cheque or bank draft.

27. There is no evidence that Qu Bo Liu Liu, in making the proposed stalking horse bids, has undertaken any due diligence in determining the value of the assets in question.

28. There is no evidence that the proposed stalking horse bids came about through a competitive process.

29. The proposed stalking horse bidder, Qu Bo Liu, is the DIP lender and also a shareholder of CDI. Ms. Liu was repaid $1,499,331 from the net sale proceeds following the closing of the West Moberly Transaction, which closed on March 25, 2025. Notably, the total of Ms. Liu's proposed stalking horse bids is just slightly less than the total of the amount that Ms. Liu was recently repaid as DIP lender ($1,499,311) plus the further $400,000 she is proposing to advance as DIP lender.

30. Each of the proposed stalking horse bids includes a break fee in the amount of 5% of the amount of the successful bid (inclusive of taxes, if any) for the assets included in the agreements. The Murray River APA also includes an expense reimbursement in the amount of $50,000.

31. The proposed break fees are excessive.

PART 5: LEGAL BASIS

32. Before the court are the competing applications to (1) continue the *CCAA* proceeding or (2) assign CDI into bankruptcy.

33. The factors that the court commonly considers in weighing competing *BIA* and *CCAA* applications are as follows:

a) The relationship between debtor and creditors;

b) Value maximization and cost minimization;

c) The availability of new financing;

d) The effects on stakeholders;

e) The behaviour of the parties; and

f) The need for the *CCAA*'s greater discretionary relief.

Emma Newbery, Liam Byrne and Valerie Cross, "Should I *CCAA* Stay or Should I BIA Go: A Review and Analysis of Judicial Treatment of Competing CCAA and BIA Applications" (2023) Annual Review of Insolvency Law

34. While most competing *BIA* and *CCAA* applications concern a receivership, in the present case, there are no secured lenders. Accordingly, a bankruptcy order is the appropriate relief sought and is supported by Canada Zhonghe.

Relationship between the debtor and creditors

35. A reasonable loss of faith in the debtor by creditors is a factor against continuing a CCAA proceeding.

Alberta Treasury Branches v. Tallgrass Energy Corp., 2013 ABQB 432 at paras. 16-18 and 21

36. Canada Zhonghe has a loss of faith and confidence in CDI, which is reasonable in light of the following:

a) CDI has had almost three years to liquidate all of its assets. Yet, CDI has chosen to conduct a sales process in a piece meal fashion and chose not to market all of its assets;

b) the ultimate sale price for Wapiti and Bullmoose was $2.45M CDN which demonstrates that the negotiations between CDI and the potential purchasers for tens of millions of dollars was not realistic (which is further supported by the fact that no deposits were paid);

c) despite the foregoing, CDI obtained numerous stay extensions apparently in the hopes that the negotiations with potential purchasers would complete;

d) CDI seeks a new sale and investment solicitation process in respect of its interest in the Murray River Project. Notably, this was included in the modified SISP obtained on November 30, 2022. CDI has had over 2.5 years to market this asset and did not achieve a sale; and

e) in the face of competing bids by Qu Bo Liu and Tane Mahuta Capital for Wapiti and Bullmoose, CDI refused to support the higher Tane Mahuta Capital bid that was supported by the creditors. This resulted in a costly seven day court hearing, substantially increasing professional fees and reducing the amount of sale proceeds available to the estate.

Value maximization and cost minimization

37. Maximization of creditor recovery is a central objective in insolvency proceedings.

9354-9186 Québec Inc v. Callidus Capital Corp, 2020 SCC 10 at para. 42

38. The court has concluded that a CCAA proceeding was inappropriate where:

a) it would not enhance the value of the assets and increase the potential for creditor returns;

Shire International Real Estate Investments Ltd., Re, 2010 ABQB 84 at paras. 8-9

b) it is unfair to burden the creditors with the professional fees in a CCAA proceeding.

Dondeb Inc., Re, 2012 ONSC 6087 at paras. 28-31

Octagon Properties Group Ltd., Re at paras. 7 and 17

Affinity Credit Union 2013 v. Vortex Drilling Ltd., 2017 SKQB 228 at para. 27(k) and 40 ("*Affinity*")

39. This CCAA proceeding was started almost three years ago. The sale process conducted by CDI demonstrates that this proceeding does not have the effect of enhancing the value of the assets. Instead, the sale process conducted by CDI significantly increased professional fees which reduced any benefit to the creditors from the sale proceeds from Wapiti and Bullmoose.

40. A bankruptcy trustee is in at least as good of a position as CDI (or the Monitor) to sell CDI's assets. A bankruptcy would ultimately result in a greater recovery to the creditors because a bankruptcy will not incur the same level of professional fees as continuing this CCAA proceeding and be more expedient.

Availability of New Financing

41. CDI has not indicated that it is seeking new financing to restructure or avoid a liquidation. This weighs against continuing the CCAA proceeding.

Affinity at para. 37

Effects on Stakeholders

42. Stakeholders considered by the court include the debtor company's employees, customers and unsecured creditors.

43. CDI is not an active business. This is a liquidating CCAA proceeding. CDI does not have arms-length employees or customers to support the continuance of the CCAA proceeding. The unsecured creditors that have been active in the CCAA proceeding – Shougang and Canada Zhonghe – oppose continuing the CCAA proceeding and support a bankruptcy order.

Behaviour of the Parties

44. Section 11.02(c) of the *CCAA* requires CDI to demonstrate it is acting in good faith and with due diligence before a court may grant a stay.

45. Where a debtor's efforts do not result in value to the estate, the debtor's due diligence will be questioned. A debtor's breach of a court order is evidence of bad faith and is inexcusable.

SLMSoft Inc., RE, 2003 CarswellOnt 4402, [2003] O.J. No. 4685 at paras. 3-4

46. Factors demonstrating that CDI is not acting in good faith and/or with due diligence include, *inter alia*:

a) its failed efforts to complete a sale process that has not resulted in any meaningful recovery to the estate in almost three years;

b) the piecemeal manner in which the sales process has been conducted;

c) in the face of competing bids by Qu Bo Liu and Tane Mahuta Capital, CDI's refusal to support Tane Mahuta Capital's higher bid, which was supported by the creditors. This resulted in a costly seven day court hearing, substantially increasing professional fees and reducing the amount of sale proceeds available to the estate;

d) breaching the court order made on February 18, 2025 by failing to serve the proposed SISP and SHAPA at least 8 business days before the April 22, 2025 hearing and ignoring inquiries by Canada Zhonghe and Shougang regarding the missing materials; and

e) representing at paragraph 35 of Mr. Liu's affidavit (affirmed on May 19, 2025) that "[d]iscussions are ongoing with CKD's counsel to set a date before the end of June for an application determine the validity and quantum of the CKD Indemnity Claim" when there were no "ongoing discussions" and no June 2025 date was raised with counsel for CKD.

No Need for CCAA's Greater Discretionary Relief

47. This is a liquidating CCAA proceeding. CDI does not need any specific relief that is only afforded under the CCAA.

Proposed Stalking Horse Bids Should Not be Approved

48. The Court of Appeal recently addressed stalking horse bids in *QRD (Willoughby) Holdings Inc. v. MCAP Financial Corporation.* The Court of Appeal quoted extensively from the decision of Fitzpatrick J. in *Re Freshlocal Solutions Inc.,* 2022 BCSC 1616.

QRD (Willoughby) Holdings Inc. v. MCAP Financial Corporation, 2024 BCCA 318, at paras. 54-61 [*MCAP Financial*]

Re Freshlocal Solutions Inc., 2022 BCSC 1616, at paras. 15-33 [*Freshlocal*]

49. The Court of Appeal in *MCAP* stated as follows at para. 58:

> It is not always the case that courts are satisfied that stalking horse bids will "optimize the changes…of securing the best possible price for the assets up for sale" (*CCM [Master Qualified Fund, Ltd. v. Blutip Power Technologies Ltd.,* 2012 ONSC 1750]. *Freshlocal* provides a good example. In that instance the proposed agreement had not "come about through a competitive process" and the inference could be drawn that it "arose less from Freshlocal's objective enthusiasm for the transaction and more from [the interim lender's] not so veiled threats of litigation." (At para. 37.) Again in Fitzpatrick's analysis:
>
> > I accept here that Freshlocal was under substantial time pressures to move this proceeding forward to a sale. However, it is anything but transparent as to how the purchase price in the SH Agreement came about.
> >
> > […]
> >
> > As was noted in *Boutique Euphoria,* an important consideration is to ensure you are riding the right "horse" in the sales process by having the right "benchmark" to hopefully attract other ---and higher---bids. A failure to test the market toward picking your "horse" might very well mean that the debtor has "baked in" a result with a stalking horse offer which is not necessarily reflective of the value of the

> assets. [At paras. 40-4; emphasis added by Court of Appeal in *MCAP*]
>
> *MCAP Financial*, at para. 58

50. The Court of Appeal in *MCAP Financial,* at paragraph 60, also cited with approval the following passage from *Leslie & Irene Dube Foundation Inc. v. P218 Enterprises Ltd.*, where Justice G.C. Weatherill had disapproved the proposed stalking horse arrangement:

> The accuracy of the stalking horse bid is key to the integrity of the stalking horse bid process because it establishes the benchmark against which other potential bidders will decide whether or not to submit a bid. One of the few tools available to the court for assessing the reasonableness of the stalking horse bid is a comparison of the bid to a valuation of the asset in question. Accordingly, an accurate valuation is also key to the integrity of the process. [At para. 34; emphasis added by the Court of Appeal in *MCAP*.]
>
> *MCAP Financial,* at para. 60
>
> *Leslie & Irene Dube Foundation Inc. v. P218 Enterprises Ltd.*, 2014 BCSC 1855, at para. 34

51. Here, there is no evidence that Qu Bo Liu, in making the proposed stalking horse bids, has undertaken any due diligence in determining the value of the assets in question. There is no evidence of the valuation of the assets in question. There is no evidence that the proposed stalking horse bids came about through a competitive process. Rather, it is apparent that the proposed stalking horse bids came about due to the imminent hearing of Shougang's bankruptcy application (which was then set for hearing on April 22, 2025), and that the total amount of the two proposed stalking horse bids is based largely on the total DIP loan amount (including the proposed increase).

Break Fees Excessive

52. Break fees will be scrutinized more closely when (1) they are in excess of the range of 1% to 5% approved in prior cases; (2) there is a lack of evidence as to what the break is for, and a concern that the bidder is seeking compensation for expenses unrelated to the bid; and (3) there is a concern about the adequacy of the negotiation process leading to the break

fee. Furthermore, when both termination and expense reimbursement fees are present, they should be reviewed in combination.

C. Yung, "*Hunting for Break Fees with my Stalking Horse",* 2024 22 *Annual Review of Insolvency Law,* 2024 CanLIIDocs 3048

53. In *Hunting for Break Fees with my Stalking Horse,* the author explained that break fees in credit bid stalking horses are more problematic:

> Certain concerns related to break fees are unique to credit bids. The first concern relates to why break fees exist, which is to compensate the bidder for the expense of being the stalking horse. In an acquisition transaction, the most significant expenses arise from the performance of due diligence, where an outside bidder must learn about the target's business, spend time and resources to determine potential liabilities and ultimately arrive at a determination of value. This differs from a credit bid by a secured creditor, which has already performed due diligence in the course of the secured creditor relationship […].
>
> […] It is likely that these bidders still performed due diligence as part of their stalking horse proposals. However, given their superior level of access to company information and contemporaneous knowledge, that effort could be expected to be significantly less than that of an outside, competing non-credit bidder.

Hunting for Break Fees with my Stalking Horse, supra

54. In *Hunting for Break Fees with my Stalking Horse,* the author offered two practical recommendations to make the review of break fees more rigorous:

> First, the "minimum and maximum" 1% to 5% break fee range cited by Canadian courts is too broad and, compared with the approach of US courts, too high. Courts should consider focusing their attention on a narrower midpoint that is closer to 2.5% to 3.5% [...].
>
> Second, courts should consider whether it is appropriate to presume that, in a credit bid, break fees should be confined to expense reimbursement only.

Hunting for Break Fees with my Stalking Horse, supra

55. With respect to the Murray River APA, Ms. Liu is seeking a break fee of 5% of the successful bid and expense reimbursement of $50,000. The superior bid must be a minimum of $1,540,000, which means that the least expensive break fee (as proposed by Ms. Liu) is $77,000, plus the $50,000 expense reimbursement, for a total of $127,000. This amounts to 9% of her proposed purchase price, and is clearly excessive.

56. With respect to the Remaining Assets APA, Ms. Liu is seeking a break fee of 5% of the successful bid. In order for another bid in the sales process to beat Qu Bo Liu's offer, it must be 10% higher. The superior bid must be a minimum of $440,000, so the least expensive break fee would be $22,000, which is 5.5% of her proposed purchase price.

57. If the Court is inclined to approve the Stalking Horse Bids, Qu Bo Liu's break fee should be confined to expense reimbursement (and only for reimbursement of expenses directly related to the bid). If the Court is inclined to award a percentage break fee in addition to expense reimbursement, that percentage ought to be significantly lower than the 5% sought by Qu Bo Liu. In *Boutique Euphoria Inc.*, the Court stated that break fees in the range of 1 to 3 per cent are normally seen as reasonable.

Boutique Euphoria Inc., Re, 2007 QCCS 7129, at para. 66

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. Claims Process Order, granted June 28, 2022;

6. Seventh ARIO, granted October 9, 2024;

7. Order made after Application, granted February 18, 2025;

8. Affidavit #1 of Yang Yang, made June 8, 2022;

9. Affidavit #1 of Naishun Liu, made May 31, 2022;

10. Affidavit #1 of Xiao Lu, made October 15, 2024;

11. Affidavit #5 of Naishun Liu, made April 8, 2025;

12. Affidavit #1 of Failang Wang, made June 8, 2022;

13. Affidavit #1 of Kaye Wong, made June 8, 2022;

14. Affidavit #1 of Channie Yoon, made April 17, 2025;

15. Affidavit #1 of Ashley Kumar, made April 17, 2025;

16. Affidavit #2 of Channie Yoon, made June 2, 2025;

17. First Report of the Monitor, dated June 8, 2022;

18. Third Report of the Monitor, dated August 16, 2022;

19. Seventh Report of the Monitor, dated September 7, 2023;

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

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

22. Twenty Fifth Report of the Monitor, dated February 17, 2025;

23. Twenty Sixth Report of the Monitor, dated April 10, 2025;

24. Supplement to Twenty Sixth Report of Monitor, dated April 21, 2025; and

25. Order made after Application, granted April 28, 2025.

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

Date: June 2, 2025

Erin Hatch

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