

FORM 27
[RULES 6.3 AND 10.52(1)]

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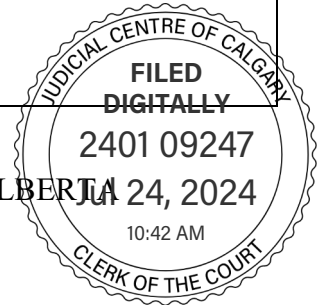
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COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY



IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 1985, c C-36, as amended

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LONG RUN EXPLORATION LTD. AND CALGARY SINOENERGY INVESTMENT CORP.

DOCUMENT

BENCH BRIEF OF THE MONITOR

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I. OVERVIEW

1. On July 4, 2024 (the "**Filing Date**"), China Construction Bank Toronto Branch ("**CCBT**" or the "**Applicant**"), in its capacity as collateral agent, sought and obtained an initial order (the "**Initial Order**") from the Court of King's Bench of Alberta (the "**Court**") to commence proceedings under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**") in respect of Long Run Exploration Ltd. ("**LRE**") and Calgary Sinoenergy Investment Corp. (the "**Guarantor**" and collectively with Long Run, the "**Debtors**"). Pursuant to the Initial Order, FTI Consulting Canada Ltd. was appointed the Monitor of the Debtors, with enhanced powers (the "**Monitor**"). The Initial Order was subsequently amended and restated by an Order of this Court granted on July 12, 2024 (the "**ARIO**"). Among other things, the ARIO extended the Stay Period (as defined in the Initial Order) in respect of the Debtors from July 14, 2024 to July 31, 2024.
2. The Debtors' ability to conduct their business and generate revenue prior to seeking protection under the CCAA had been constrained by liabilities significantly exceeding assets, defaulting on several debt obligations, and the expectation that liquidity will run out in the near term.
3. In the Applicant's application to this Court for the ARIO, the Applicant advised that the restructuring plan while under CCAA protection would involve, among other things, efforts to undertake a sale and investment solicitation process to maximize the value of the Debtors' business and property for the benefit of stakeholders.
4. After arm's-length and good faith discussions and negotiations, the Debtors' restructuring efforts have culminated in an integrated restructuring proposal (the "**Restructuring Proposal**") by Hiking Group Shandong Jinyue Int't Trading Corporation or its nominee (the "**Stalking Horse Bidder**"), which consists of (with defined terms in each case defined below):
 - (a) a stalking horse subscription agreement between LRE and the Stalking Horse Bidder, which forms the basis of the Stalking Horse Bid, which would in turn set the "floor price" for the acquisition of substantially all the Debtors' business and assets;

- (b) a SISP that provides for a process to identify potentially higher and better offers than provided for by the Stalking Horse Bid; and
 - (c) a Term Sheet which provides the Debtors with interim funding required to meet their operational and administrative expenses through to the completion of the SISP.
5. The Monitor submits that the extension of the Stay Period furthers the Debtors' restructuring efforts, as it will allow for the Restructuring Proposal to be carried out. The extension of the Stay Period (as defined in the Initial Order) is required to maintain the stability of the Debtors' business and provide required breathing room as the Debtors and the Monitor pursue the Restructuring Proposal for the benefit of their stakeholders.
6. The Monitor further submits that this Court's approval of the Restructuring Proposal is in the best interests of the Debtors and their stakeholders and assists the Debtors' efforts to maximize value through these CCAA proceedings.

II. RELIEF SOUGHT

7. In furtherance of the Debtors' restructuring efforts, and to implement the Restructuring Proposal, the Monitor files this Bench Brief in support of its application for a Second Amended and Restated Initial Order ("**SARIO**") pursuant to the CCAA. The Monitor seeks a SARIO, among other things:
- (a) abridging the time for service of the application and declaring that it is properly returnable on July 30, 2024, and dispensing with further service of this application;
 - (b) extending the Stay Period (as defined in the Initial Order) from July 31, 2024 to October 31, 2024 (as extended, the "**Stay Period**");
 - (c) authorizing the Debtors to obtain interim financing pursuant to terms of the Term Sheet (as defined below), up to an amount equal to \$7 Million, and granting a DIP Lender's Charge (as defined below) against the property of the Debtors, on the terms and priority as outlined in the proposed SARIO;

- (d) amending the ARIIO granted in these proceedings on July 12, 2024 to reflect the DIP Lender's Charge and the priority thereof;
- (e) approving the terms of a stalking horse subscription agreement between LRE and the Stalking Horse Bidder dated July 23, 2024 (the "**Stalking Horse Bid**");
- (f) approving a stalking horse sale and investment solicitation process in relation to the assets, property, and undertakings and/or business operations of the Debtors (the "**SISP**");
- (g) authorizing the Debtors to reimburse the Stalking Horse Bidder for certain fees incurred by it in connection with the negotiation of the Stalking Horse Bid and the SISP and approving certain bid protections in favour of the Stalking Horse Bidder should a bid superior to that of the Stalking Horse Bid be selected in accordance with the SISP; and
- (h) such further and other relief as counsel may advise and this Honourable Court may deem appropriate.

III. FACTS

8. The relevant facts relating to the Debtors' background, financial position, and indebtedness are particularized in the Affidavit of Ziqing (Eddie) Zou affirmed on July 2, 2024 (the "**Zou Affidavit**"), the First Report of the Monitor dated July 9, 2024, and the Second Report of the Monitor dated July 23, 2024, and are not repeated here. Any defined terms not defined herein have the definition ascribed to them in the Zou Affidavit or in the Subscription Agreement, as defined below.

A. DIP FINANCING

9. The Debtors and the Monitor have negotiated and entered into the interim financing term sheet, dated July 23, 2024 (the "**Term Sheet**"), pursuant to which Hiking Group Shandong Jinyue Int'l Trading Corporation or an affiliate thereof (the "**DIP Lender**"), has, conditional on the issuance of the SARIO, among other terms, agreed to provide the Debtors with a term loan \$7 Million (the "**DIP Facility**").

10. The DIP Facility is conditional on the DIP Lender receiving a second priority Court-ordered charge on the assets, property and undertakings of the Debtors, in priority to any and all encumbrances but subordinate to the Administration Charge (the "**DIP Lender's Charge**").

B. THE SUBSCRIPTION AGREEMENT AS THE STALKING HORSE BID

11. The Monitor, LRE and the Stalking Horse Bidder have entered into negotiations for the subscription for and purchase of shares by the Stalking Horse Bidder to be completed through a series of transactions between LRE and the Stalking Horse Bidder, subject to approval by the Court of a reverse vesting order, upon the conditions set in the Subscription Agreement (the "**Subscription Agreement**").
12. The Monitor in accordance with its enhanced powers on behalf of LRE and the Stalking Horse Bidder have entered into the Subscription Agreement as a Stalking Horse Bid which contemplates that the Debtors and the Monitor will conduct a SISP to solicit interest in, and opportunities for:
 - (a) one or more of a restructuring, recapitalization, or other form of reorganization of the Debtor's business and affairs as a going concern; or
 - (b) a sale of all, substantially all, or one or more components of the property and/or business as a going concern or otherwise.
13. The Stalking Horse Bid contemplates aggregate consideration payable by the Stalking Horse Bidder to acquire 100% of the common shares of LRE (the "**Purchase Price**") equal to the sum of:
 - (a) a cash payment to the Monitor of not more than \$22,000,000 for priority payables, with adjustments to be determined after closing;
 - (b) a cash payment to the Monitor for the benefit of the Creditor Trust to be established in accordance with the terms of the Stalking Horse Bid; and
 - (c) a set-off of the amounts owing pursuant to the DIP Facility.

14. Further, the Stalking Horse Bid contemplates approval by this Court by way of a reverse vesting order, pursuant to which the Stalking Horse Bidder will assume Retained Assets and Retained Liabilities, including the indebtedness owed to CCBT, with other Transferred Assets and Transferred Liabilities to be transferred to the Creditor Trust.

C. THE SISP

15. The SISP is comprised of two phases ("**Phase 1**" and "**Phase 2**", respectively). Phase 1 requires interested parties to submit a non-binding letter of intent which contains critical information about the proposed bid. If no bids are received in Phase 1, the SISP provides that the Monitor will seek court approval of the Stalking Horse Bid. Phase 1 Qualified Bidders (as defined in the SISP) that meet certain criteria outlined more particularly in the SISP will have the opportunity to submit a formal offer at a later date as part of Phase 2.
16. Phase 2 Qualified Bidders (as defined in the SISP) that wish to make a formal offer to purchase or make an investment in the Debtors or their property or business must submit a binding offer that complied with the requirements specified in the SISP. The bid must include, among other things, authorized and executed transaction agreements, including the purchase price, investment amount and any other key economic terms.
17. If one or more binding offers are received in addition to the Stalking Horse Bid (provided that any financing condition contained in the Stalking Horse Bid has been waived or satisfied), an auction process will be conducted by the Monitor, with the highest and best bid resulting therefrom subject to approval by the Court.
18. Schedule B of the SISP sets out the deadlines for each step of the sales process.

IV. ISSUES

19. The issues before this Court on this application are whether this Court should approve:
 - (a) an extension of the Stay Period;
 - (b) the DIP Financing Term Sheet and DIP Lender's Charge;

- (c) the Subscription Agreement; and
 - (d) the SISP, including the provision for the Stalking Horse Bid and break fee.
20. The Monitor submits that such relief should be approved as being necessary and appropriate in the circumstances.

V. LAW AND ARGUMENT

A. THE RELIEF SOUGHT FURTHERS THE PURPOSE OF THE CCAA

21. Restructuring proceedings under the CCAA provide a means for a court-supervised attempt to reorganize the affairs of the debtor company.¹ The courts have regularly approved sales and sale processes, as the CCAA provides the courts with broad powers to approve sales in relation to a debtor's business and assets either prior to or in the absence of a plan of compromise or arrangement.² Such processes are consistent with the remedial purpose and flexibility of the CCAA.³
22. In *Sanjel Corporation (Re)*, this Court recognized that the CCAA can provide a court-supervised process of the execution of the sales of assets, with provision for liquidity and the continuation of the business through the process provided by interim financing.⁴
23. The Restructuring Proposal and the other relief sought by the Monitor furthers the purpose of the CCAA by, among other things:
- (a) providing for a Stalking Horse Bid that will provide significant value for stakeholders by demonstrating that there will be a going concern outcome for the Debtors' business;
 - (b) enhancing the fairness of the SISP through the Stalking Horse Bid including by setting a floor price that will potentially be bested by any bids received under the SISP; and

¹ *Century Services Inc v Canada (Attorney General)*, 2010 SCC 60 at para 59, citing *Elan Corp v Comiskey* (1990), 41 OAC 282 at para 57, per Doherty JA, dissenting [TAB 2].

² *Nortel Networks Corp (Re)*, 2009 CanLII 39492 (ON SC), 55 CBR (5th) 229 at paras 47-48 [Nortel] [TAB 3].

³ *Nortel*, *supra* at paras 47-48 [TAB 3]; *Sanjel Corporation (Re)*, 2016 ABQB 257 at para 64 [Sanjel] [TAB 4].

⁴ *Sanjel*, *supra* at para 65 [TAB 4].

(c) providing for interim financing to provide stability and continue going concern operations during the Stay Period and during five months sales process contemplated by the SISP.

24. For these reasons, and the further reasons set out below, the Monitor submits that this Court's granting of the relief sought by the Monitor, in furtherance of the Debtors' restructuring efforts, will further the purpose of the CCAA and is in the best interests of stakeholders.

B. STAY EXTENSION

25. The Initial Order provided for a Stay Period of 10 days up to and including July 14, 2024. The ARIO extended the Stay Period up to and including July 31, 2024.

26. The Monitor is supportive of an extension of the Stay Period to October 31, 2024.

27. Pursuant to section 11.02(3) of the CCAA, the Court may grant an extension of a stay of proceedings where: (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and (b) the applicant satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.⁵

28. Since the granting of the Initial Order, the Debtors have acted, and are acting, in good faith and with due diligence to advance a viable restructuring for the benefit of their stakeholders. Since the date of the ARIO, the Monitor has engaged in various steps in the proceedings pursuant to the CCAA (the "**CCAA Proceedings**") in connection with restructuring efforts in relation to Debtors. The Monitor has, amongst other things, communicated with stakeholders of the Debtors, reviewed and commented on the Term Sheet, developed and negotiated the Stalking Horse Bid with the Stalking Horse Bidder, developed and negotiated the SISP with the Stalking Horse Bidder, and brought this application.

29. The requested extension is reasonable given the Debtors' restructuring plans and the timelines set out in the SISP. The requested extension will provide the Debtors with the

⁵ *Companies' Creditors Arrangement Act*, [RSC 1985, c C-36](#), as amended, s. 11.02(3) [CCAA] [TAB 1].

additional time they require to further advance their restructuring efforts through the implementation of the SISP. No creditor will be materially prejudiced by an extension of the Stay Period, as the requested extension is in the creditors' best interests.

30. With the benefit of the interim financing to be provided pursuant to the Term Sheet, the Debtors will have sufficient funds to continue going concern operations during the Stay Period and fund the CCAA Proceedings through the requested extension period.

C. DIP FINANCING

(i) THE TEST FOR APPROVING INTERIM FINANCING

31. Since 2009, section 11.2(1) of the CCAA has codified a supervising judge's discretion to approve interim financing, and to grant a corresponding security or charge in favour of the lender in the amount the Court considers appropriate.⁶

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.⁷

32. The breadth of the Court's discretion to approve interim financing is apparent from the wording of section 11.2(1) of the CCAA.⁸ Section 11.2(1) of the CCAA simply provides that the financing must be in an amount that is "appropriate" and "required by the company, having regard to its cash-flow statement."⁹
33. The Court may also grant the lender a "super-priority charge" that will rank in priority over the claims of any secured creditors, pursuant to section 11.2(2) of the CCAA:

⁶ 9354-9186 *Québec inc v Callidus Capital Corp*, 2020 SCC 10 at para 86 [*Callidus*] [TAB 5].

⁷ CCAA, *supra*, s. 11.2(1) [TAB 1].

⁸ *Callidus*, *supra* at para 87 [TAB 5].

⁹ *Callidus*, *supra* at para 87 [TAB 5].

Priority – secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.¹⁰

34. The Supreme Court of Canada in *9354-9186 Québec inc v Callidus Capital Corp* recently commented on the importance of priority for the lender:

[89] Such charges, also known as “priming liens”, reduce lenders’ risks, thereby incentivizing them to assist insolvent companies. As a practical matter, these charges are often the only way to encourage this lending. Normally, a lender protects itself against lending risk by taking a security interest in the borrower’s assets. However, debtor companies under CCAA protection will often have pledged all or substantially all of their assets to other creditors. Accordingly, without the benefit of a super-priority charge, an interim financing lender would rank behind those other creditors. Although super-priority charges do subordinate secured creditors’ security positions to the interim financing lender’s — a result that was controversial at common law — Parliament has indicated its general acceptance of the trade-offs associated with these charges by enacting s. 11.2(2).¹¹ [citations omitted]

35. Section 11.2(4) of the CCAA sets out a non-exhaustive list of factors that help guide the Court in exercising its broad discretion to approve interim financing and grant a lender's charge:¹²

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

- (a) the period during which the company is expected to be subject to proceedings under this Act;
- (b) how the company’s business and financial affairs are to be managed during the proceedings;
- (c) whether the company’s management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

¹⁰ CCAA, *supra*, s. 11.2(2) [TAB 1].

¹¹ *Callidus*, *supra* at para 89 [TAB 5].

¹² *Callidus*, *supra* at para 90 [TAB 5]; *Canwest Publishing Inc*, [2010 ONSC 222](#) at para 42 [TAB 6].

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.¹³

36. The factors need to be mechanically applied or individually reviewed by the Court.¹⁴ Not all of them will be significant in every case.¹⁵ Determining whether to grant a super-priority charge is a balancing analysis and each factor is to be considered in equal measure.¹⁶

37. In addition to the statutory factors set out above, courts have determined that additional factors are relevant to an application under section 11.2:

(a) the petitioner would be forced to stop operating without interim financing and whether bankruptcy would be in the interest of the petitioner's stakeholders;¹⁷

(b) the proposed interim financing will support the debtor's restructuring plans, including implementation of a sales process;¹⁸ and

(c) the balancing of prejudice weighs in favour of approval of the interim loan facility.¹⁹

38. In *Re Canwest Global Communications Corp*, the Court granted a motion for interim financing under section 11.2 of the CCAA. The Court reasoned that the secured creditors either were served or were unaffected by the interim financing charge; that the amount of the interim financing facility was appropriate having regard to the debtor's cash-flow statement; management appeared to have the confidence of the major creditors; there was

¹³ CCAA, *supra*, s. 11.2(4) [TAB 1].

¹⁴ *Callidus*, *supra* at para 97 [TAB 5].

¹⁵ *Callidus*, *supra* at para 97 [TAB 5].

¹⁶ See *Pacific Shores Resort & Spa Ltd (Re)*, 2011 BCSC 1775 at para 49 [TAB 7]; See also *White Birch Paper Holding Co (Re)*, 2010 QCCS 1176 at para 33 [TAB 8].

¹⁷ *North American Tungsten Corp (Re)*, 2015 BCSC 1376 at para 33 [*North American*], citing *Timminco Ltd (Re)*, 2012 ONCA 552 at para 6 [TAB 9].

¹⁸ *North American*, *supra* at para 35 [TAB 9].

¹⁹ *North American*, *supra* at para 34, citing *Sun Indalex Finance LLC v United Steelworkers*, 2013 SCC 6 at paras 58-59 [TAB 9].

no material prejudice to any of the creditors that would arise from the granting of the charge; and the facility would enhance the prospects of a restructuring.²⁰

(ii) THE COURT SHOULD APPROVE THE DIP FINANCING

39. As set out in the Zou Affidavit, the Cash Flow Forecast, and the Second Report of the Monitor, the Debtors require interim financing in order to fund their operations and pursue restructuring efforts.
40. The Monitor, in accordance with its enhanced powers on behalf of the Debtors, has agreed to the terms for the provision of interim financing with the DIP Lender as set out in the DIP Financing Term Sheet. As is standard, the DIP Facility is conditional upon, among other things, the issuance of the proposed order approving the DIP Facility and granting a DIP Lender's Charge. The DIP Facility is also conditional upon the Court's approval of the Subscription Agreement.
41. The Monitor is of the view that it is appropriate and reasonable for this Court to exercise its discretion to approve the DIP Facility and to grant the associated DIP Lender's Charge as:
 - (a) the DIP Facility consists of economic terms for such financing, including a substantial amount of principal offered, a fair market interest rate, and lower financing fees;
 - (b) the DIP Facility will be able to fund the working capital needs of the Debtors, the professional fees and expenses incurred by the Debtors and the Monitor in respect of the CCAA Proceedings, and other costs and expenses necessary for the restructuring;
 - (c) the maturity date of the Term Sheet extends for a sufficient period of time to allow the Monitor and the Debtors to complete the SISF for the maximum value for the Debtors' stakeholders and enhance the prospects of restructuring;

²⁰ *Canwest Global Communications Corp (Re)*, [2009 CanLII 55114 \(ON SC\)](#), 59 CBR (5th) 72 at paras 32-36 [TAB 10].

- (d) the amount of the DIP Facility is appropriate having regard to the Debtors' cash flow statement; and
 - (e) there does not appear to be any material prejudice to any of the creditors that would arise from granting the DIP Facility.
42. For the reasons set out above, the Monitor believes that the Term Sheet and the DIP Lender's Charge are fair and reasonable in the circumstances, necessary and in the best interest of the Debtors and their stakeholders.

D. THE SISF AND STALKING HORSE BID

(i) THE TEST FOR APPROVING STALKING HORSE SALES PROCESSES

43. A stalking horse sales process like that contemplated by the SISF and Stalking Horse Bid is a recognized type of sales process repeatedly applied in insolvency proceedings to endeavour for the best price for the business or assets being sold.²¹ The purpose behind using stalking horse agreements in sales processes is to establish a floor price to garnish superior bids to the stalking horse bid from interested parties and create a competitive bidding environment while ensuring fairness of the sales process.²²
44. The Court in *CCM Master Qualified Fund Ltd v blutip Power Technologies Ltd* [**CCM Master**] held that when considering a sales solicitation process, including the use of a stalking horse bid, the following factors are usually assessed by a court:
- (a) the fairness, transparency and integrity of the proposed process;
 - (b) the commercial efficacy of the proposed process in light of the specific circumstances; and

²¹ *CCM Master Qualified Fund Ltd v blutip Power Technologies Ltd*, [2012 ONSC 1750](#) at para 7 [**CCM Master**] [TAB 11]; *Brainhunter Inc (Re)*, [2009 CanLII 72333 \(ON SC\)](#) at para 13 [TAB 12]; *Freshlocal Solutions Inc (Re)*, [2022 BCSC 1616](#) at para 23 [**Fresh Local**] [TAB 13].

²² *Danier Leather Inc (Re)*, [2016 ONSC 1044](#) at para 20, citing to *CCM Master*, *supra* at para 7 [TAB 14].

- (c) whether the sales process will optimize the changes, in the particular circumstances, of securing the best possible price for the assets up for sale.²³
45. The British Columbia Supreme Court in *Freshlocal Solutions Inc (Re)* [**Freshlocal**], recently surveyed the Canadian authorities relevant to consideration of stalking horse bids, and stated the relevant factors for approval:
- (a) how did the stalking horse agreement arise?
 - (b) what are the stability benefits?
 - (c) does the timing support approval?
 - (d) who supports or objects to the stalking horse agreement?
 - (e) what is the true cost of the stalking horse agreement? and
 - (f) is there an alternative?²⁴
46. Osborne J in *Validus Power Corp et al* expressed that both *CCM Master* and *Freshlocal* are similar, in that:
- [35] In my view, these authorities are entirely consistent with one another and, while articulating the factors in a slightly different manner, each approaches the analysis in the same way and with the same objectives. The slightly more detailed list of factors set out by Justice Fitzpatrick in *Freshlocal* are in my view all subsumed, or they should be, in the three factors set out by Justice Brown in *CCM*.²⁵
47. Moreover, Osborne J noted that both of those authorities are also consistent with the approach of the Québec Superior Court in *Boutique Euphoria Inc. (Re)* [**Boutique**], where the Court set out a list of non-exhaustive factors relevant to the approval of stalking horse bids in.²⁶
48. Osborn J distilled his analysis into one overarching question:

²³ *CCM Master*, [supra](#) at para 6 [TAB 11].

²⁴ *Freshlocal*, [supra](#) at paras 24-32 [TAB 13].

²⁵ *Validus Power Corp et al and Macquarie Equipment Finance Limited*, [2023 ONSC 6367](#) at para 35 [*Validus*] [TAB 15].

²⁶ *Validus*, [supra](#) at para 36 [TAB 15]; see *Boutique Euphoria Inc (Re)*, [2007 QCCS 7129](#) at para 37 [*Boutique*] [TAB 16].

These analyses distill, essentially, to this question: taking into account the support for and opposition to the terms of the proposed SISP and stalking horse agreement, while recognizing whether and how those parties supporting or opposing it are economically affected by the outcome, will the proposed process (including its stalking horse bid component and all other material terms), if approved and approved at this time, likely result in the best recovery on the assets being sold pursuant to a fair and transparent process?²⁷

49. Osborne J's distillation of the various tests from *CCM Master*, *Freshlocal* and *Boutique* is consistent with the factors in *Nortel Networks Corporation (Re)* applied whenever the court is required to consider whether to exercise its general discretionary power to authorize any sales process, including a stalking horse sales process:

- (a) is a sale transaction warranted at this time?
- (b) will the sale benefit the whole "economic community"?
- (c) do any of the debtor's creditors have a *bona fide* reason to object to a sale of the business? And
- (d) is there a better viable alternative? (the "**Nortel Factors**")²⁸

50. The courts have confirmed that the sales process need not be perfect, so long as it is reasonable.²⁹

(ii) THE SISP AND STALKING HORSE BID SHOULD BE APPROVED

51. In the view of the Monitor, the SISP and Stalking Horse Bid are warranted and should be approved as:

- (a) the SISP was one of the Debtors' restructuring plans in the CCAA Proceedings;
- (b) a sale of the Debtors' assets or business on a going concern basis is in the best interests of their stakeholders;

²⁷ *Validus*, *supra* at para 68 [TAB 15].

²⁸ *Nortel*, *supra* at para 49 [TAB 3].

²⁹ *Sanjel*, *supra* at para 80 [TAB 4].

- (c) the SISP will be conducted by the Monitor, in consultation with the Debtors, in a fair and transparent manner;
- (d) the SISP provides flexibility to prospective bidders who may submit bids to one or more of an investment, restructuring or other form of reorganization of all or some of the Debtors' business;
- (e) the Phase 1 and Phase 2 bid opportunities contemplated by the SISP will ensure that the Debtors' assets are adequately exposed to the market;
- (f) the three-month timeline set out in the SISP provides a reasonable opportunity for all prospective bidders to submit competing offers to identify a transaction that maximizes value for the Debtors and stakeholders; and
- (g) the SISP is a fair and transparent marketing process designed to identify the highest and best offers for the Debtors' assets and to maximize recoveries, by setting a floor price and providing an opportunity for interested parties to solicit superior offers.

52. The Monitor supports the proposition that the proposed SISP satisfies both the *Nortel* Factors, as well as the question distilled by Osborne J, which encompassed the factors set out in *Freshlocal*, *CMM* and *Boutique*: that the approval of the proposed stalking horse sales process will likely result in the best recovery to the Debtor's stakeholders. The Monitor submits that the structure and terms of the SISP are reasonable, fair and transparent, and appropriate in the circumstances, and should be approved.

VI. CONCLUSION

53. The Monitor is of the view that the Debtors have been acting in the best interests of its stakeholders and exercising due diligence. All the relief sought is intended to maximize value for the Debtors' stakeholders and facilitate a going concern transaction in a fair and reasonable manner.

54. The Monitor respectfully submits that the relief requested in the SARIO is necessary and appropriate and ask that the SARIO be granted by this Court.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 23rd DAY OF JULY, 2024.

BENNETT JONES LLP

Per: *Kelsey Meyer*
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VII. TABLE OF AUTHORITIES

TAB AUTHORITY

1. *Companies' Creditors Arrangement Act*, [RSC 1985, c C-36](#), as amended
2. *Century Services Inc v Canada (Attorney General)*, [2010 SCC 60](#)
3. *Nortel Networks Corp (Re)*, [2009 CanLII 39492 \(ON SC\)](#), 55 CBR (5th) 229
4. *Sanjel Corporation (Re)*, [2016 ABQB 257](#)
5. *9354-9186 Québec inc v Callidus Capital Corp*, [2020 SCC 10](#)
6. *Canwest Publishing Inc*, [2010 ONSC 222](#)
7. *Pacific Shores Resort & Spa Ltd (Re)*, [2011 BCSC 1775](#)
8. *White Birch Paper Holding Co (Re)*, [2010 QCCS 1176](#)
9. *North American Tungsten Corp (Re)*, [2015 BCSC 1376](#)
10. *Canwest Global Communications Corp (Re)*, [2009 CanLII 55114 \(ON SC\)](#)
11. *CCM Master Qualified Fund Ltd v blutip Power Technologies Ltd*, [2012 ONSC 1750](#)
12. *Brainhunter Inc (Re)*, [2009 CanLII 72333 \(ON SC\)](#)
13. *Freshlocal Solutions Inc (Re)*, [2022 BCSC 1616](#)
14. *Danier Leather Inc (Re)*, [2016 ONSC 1044](#)
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