

No. S241161
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

BETWEEN:

THE BANK OF NOVA SCOTIA

PETITIONER

AND:

**BIFANO CONSOLIDATED INC.,
BIFANO FARMS INC.,
NATA FARMS INC.,
SSC VENTURES (NO. 105) LTD. and
SPALLUMCHEEN FARM LTD.**

RESPONDENTS

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE)
MADAM JUSTICE FITZPATRICK) March 11, 2024
)

ON THE APPLICATION of the Petitioner coming on for hearing at Vancouver, British Columbia, on the 11th day of March, 2024; **AND ON HEARING** Lisa Hiebert and Mishaal Gill, counsel for the Petitioner, and those other counsel listed on **Schedule "A"** hereto; **AND UPON READING** the application material filed, including the Affidavit of James Cook sworn February 13, 2024 and the first report of Alvarez & Marsal Canada Inc. (the "**Monitor**") in its capacity as monitor of the Respondents dated March 7, 2024; **AND PURSUANT TO** the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"), the *Supreme Court Civil Rules* and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

1. The sale solicitation procedures (the “**Sale Process**”), in substantially the form attached as **Schedule “B”** hereto, are approved and the Monitor and its advisors, employees, agents and contactors are hereby authorized and directed to take any and all actions as may be necessary or desirable to implement and carry out the Sale Process in accordance with its terms and this order.
2. In addition to all protections afforded under the orders made in these proceedings, the CCAA and at law, the Monitor and its affiliates, partners, directors, employees, agents, consultants, advisors, experts, accountants, counsel and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of implementing or otherwise in connection with the Sale Process, except to the extent such losses, claims, damages or liabilities result from their respective gross negligence or wilful misconduct, as applicable, as determined by this Court.

PIPEDA

3. Pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act* or Section 18(10)(o) of the British Columbia *Personal Information Protection Act*, the Monitor and its advisors are authorized and permitted to disclose and transfer to prospective purchasers or bidders, and their advisors, personal information of identifiable individuals, but only to the extent desirable or required to negotiate or attempt to complete a transaction pursuant to the Sale Process (a “**Transaction**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of a Transaction, and if it does not complete a Transaction, shall return all such information to the Monitor, or in the alternative, destroy all such information and provide confirmation of its destruction if requested by the Monitor. The successful purchaser(s) under the Sale Process shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Respondents.

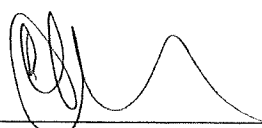
General

4. The Monitor may, from time to time, apply to this Court for advice and directions in the discharge of its powers and duties under the Sale Process.

5. THIS COURT HEREBY REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Monitor and its agents in carrying out the terms of this order.

6. Endorsement of this order by counsel appearing on this application, other than counsel for the Petitioner, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:


 Signature of Lisa Hiebert
 Lawyer for the Petitioner


 BY THE COURT


 REGISTRAR



Schedule "A"
Appearance List

Counsel Name	Party Represented
Jordan Schultz	Bifano Consolidated Inc., Bifano Farms Inc; Nata Farms Inc., SSC Ventures (No.105) Ltd. and Spallumcheen Farm Ltd.
Bryan Gibbons	Alvarez & Marsal Canada Inc., as Monitor
Heather Frydenlund	CWB National Leasing Inc.
Christian Garton	Sure Crop Feeds
Jonathan Ross	Bank of Montreal Transportation Finance

Schedule "B"
Sale Solicitation Procedures

SALE AND INVESTMENT SOLICITATION PROCEDURE
Bifano Consolidated Inc., and others

INTRODUCTION

1. Pursuant to an order (the **"Initial Order"**) made February 28, 2024 (the **"Initial Order Date"**), the Supreme Court of British Columbia (the **"Court"**) granted protection to Bifano Consolidated Inc., Bifano Farms Nata Farms Inc., Spallumcheen Farm Ltd., and SCC Ventures (No. 105) Ltd (collectively, the **"Company"**) under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 (the **"CCAA"**) and the Company's proceedings under the CCAA, the **"CCAA Proceedings"**).
2. Pursuant to the Initial Order, among other things:
 - (a) Alvarez & Marsal Canada Inc. was appointed as monitor (in such capacity, the **"Monitor"**) of the Company in the CCAA Proceedings with certain enhanced powers; and
 - (b) the Court approved interim financing to be provided by The Bank of Nova Scotia (the **"Interim Lender"**).
3. On March 11, 2024, the Court made orders in the CCAA Proceedings: (a) amending and restating the Initial Order (the **"ARIO"**); and (b) authorizing and directing the Monitor to implement a sale process (the **"Sale Process Order"**) in respect of the Company's Property and Business, as defined in paragraph 4 hereof, in accordance with these procedures (the **"Sale Process"**). Copies of the ARIO and the Sale Process Order can be found at: <http://www.alvarezandmarsal.com/BifanoNata>.
4. The purpose of the Sale Process is to solicit offers for one or more, or any combination of:
(a) the sale of all, substantially all, or components of the Company's assets (the **"Property"**) and/or the Company's business operations (the **"Business"**) as a going concern or otherwise; or (b) a restructuring, recapitalization or other form of reorganization of the Business and affairs of the Company as a going concern or otherwise.
5. The terms of this Sale Process, including the requirements, criteria, and timelines, may be amended, extended, or waived by the Monitor or by further order of this Court. In determining whether to do so, the Monitor may consult with the Interim Lender and the Company.

"AS IS, WHERE IS" BASIS

6. Any transaction involving the Property, the Business or the Company (in each case, a **"Transaction"**) will be subject only to such representations, warranties, covenants, or indemnities as are expressly included in a Final Agreement (as defined in paragraph 30), but will otherwise be on an "as is, where is" basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description by the Company, or any of its agents, estates, advisors, professionals or otherwise, including without limitation, the Monitor.

TIMELINE

7. The following table sets out the target dates under the Sale Process:

PHASES	TARGET DATES
Sale process to commence – distribution of teaser letter and confidentiality agreement	March 15, 2024
Bid Submission Deadline	April 19, 2024
Selection of Successful Bid(s)	April 26, 2024
Approval Order	No later than May 24, 2024
Outside Closing Date	No later than June 21, 2024

SUPERVISION AND CONDUCT OF THE SALE PROCESS

8. The Monitor may engage such other consultants, agents or experts and such other persons from time to time as it considers necessary to assist with this Sale Process.
9. The Monitor will oversee, in all respects, the conduct of this Sale Process, and all discussions regarding the Sale Process must be directed through the Monitor.
10. The Monitor will, in accordance with these procedures and on a confidential basis, provide information to the Interim Lender and the Company.
11. To the extent that any Potential Bidder (as defined in paragraph 18) wishes to engage, discuss, or communicate with any party with an existing contractual relationship with the Company in relation to this Sale Process or the Business or Property, such Potential Bidder may only do so after advising the Monitor and obtaining the Monitor's consent. In considering any specific request, the Monitor shall impose such restrictions (if any) or participation by the Monitor as the Monitor deems appropriate.
12. The Company shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations under this Sale Process and provide the Monitor with the assistance, information and documentation that is reasonably necessary to enable the Monitor to adequately conduct its functions in this Sale Process.
13. The Company, the Monitor and any of their respective agents, estates, advisors, and professionals are not responsible for, and will have no liability with respect to, any information provided to or obtained by any Potential Bidder in connection with the Company, the Property, or the Business.
14. The Company, Monitor, and Interim Lender shall keep confidential:
 - (a) the names, details, and all other non-public information related to bidders or bids under this Sale Process, including, but not limited to, the names or identities of

any bidder or potential bidder, the number of bidders, the details of any bid or potential bid (whether binding or non-binding) or any definitive agreement(s); and

- (b) any other information provided to them and marked as confidential,

and shall only use such information to conduct this Sale Process, or as is reasonably necessary to seek directions from or make submissions to the Court, or to obtain, oppose, or otherwise make submissions regarding the approval of any Successful Bid or Back Up Bid (as defined in paragraph 27) all while taking such steps as may be reasonably necessary so as to preserve the confidentiality of such information and protect the integrity of the Sale Process.

SOLICITATION OF INTEREST

15. The Monitor, in consultation with the Company, may, but is not required to, cause a notice regarding this Sale Process to be published in any publication in which the Monitor considers appropriate.
16. The Monitor, in consultation with the Company and the Interim Lender, will prepare a list of potential bidders (the "**Known Potential Bidders**") who may have an interest in a Transaction. Such list will include both strategic and financial parties who, in the Monitor's reasonable judgment, may be interested in acquiring an interest in the Property, the Business, the Company or any part (or parts) thereof (a "**Bid**").
17. The Monitor and the Company will prepare an initial marketing or offering summary (a "**Teaser Letter**") and distribute it to the Known Potential Bidders together with any additional marketing materials the Monitor considers appropriate, as well as a draft form of confidentiality agreement (the "**Confidentiality Agreement**").
18. Any Known Potential Bidder or other person wishing to submit a Bid who (a) executes a Confidentiality Agreement in form and substance satisfactory to the Monitor, (b) in the judgment of the Monitor appears to have a *bona fide* interest in submitting a Bid, and (c) in the judgment of the Monitor appears to have the financial wherewithal and the technical, managerial, and operational expertise and capabilities to make a viable Bid, shall be deemed to be a potential bidder (each such person so deemed, a "**Potential Bidder**").

DUE DILIGENCE

19. The Monitor and the Company may prepare such marketing or other materials in addition to the Teaser Letter as they deem appropriate describing the opportunity to make a Bid for distribution to Known Potential Bidders and/or Potential Bidders.
20. The Monitor shall provide Potential Bidders with access to an electronic data room that will contain information in the possession or control of the Monitor or the Company that in their reasonable business judgment, and subject to competitive and other business conditions, will allow Potential Bidders to evaluate their interest in submitting a Bid. This information may include management presentations and other matters that Potential Bidders may request and the Monitor may, in its reasonable business judgment, agree. The Monitor may designate a representative to coordinate all reasonable requests for additional information and due diligence access from Potential Bidders and the manner

in which such requests must be communicated. The Monitor is not obligated to furnish any information relating to the Company, Property or Business except to Potential Bidders. For avoidance of doubt, and without limiting the terms of applicable Confidentiality Agreements, selected due diligence materials may be withheld from certain Potential Bidders if the Monitor determines such information to represent proprietary or sensitive competitive information.

21. All Potential Bidders will be provided with a form of draft asset purchase agreement (the "**Draft APA**").

SELECTION OF BINDING BIDS

22. Any Potential Bidder may submit a Bid to the Monitor in the manner and at the address specified in **Schedule "A"** to be received by the Monitor not later than 5:00 p.m. (Pacific time) on **April 19, 2024** (the "**Bid Submission Deadline**"). The Monitor shall provide copies of any Bids received to the Interim Lender, unless such Bids include cash consideration sufficient to pay all amounts owing to the Interim Lender (including principal, interest and costs pursuant to the Company's facilities that were owing as of the Initial Order Date (the "**Pre-Filing Debt**")) and may provide copies of any Bids received to the Company.
23. A Bid shall be a "**Qualified Bid**" if it:
 - (a) indicates whether the Potential Bidder wishes to tender a bid for the Property pursuant to an asset purchase Transaction (an "**Asset Bid**") or a restructuring of the debt, shares, or capital structure of the Company (a "**Restructuring Bid**"), or both;
 - (b) states that the Bid is irrevocable until the earlier of: (i) approval by the Court; and (ii) 45 days following the Bid Submission Deadline; provided, however, that if the Bid is selected as the Successful Bid or the Backup Bid (each as defined below), it shall remain irrevocable until the closing of the Successful Bid or the Backup Bid, as the case may be;
 - (c) does not contain any request or entitlement to any break fee, expense reimbursement or similar type of payment;
 - (d) includes written evidence of a firm, irrevocable commitment for all required funding and/or financing from a creditworthy bank or financial institution to consummate the proposed Transaction, or other evidence of ability to consummate the proposed Transaction that will allow the Monitor to make a reasonable determination as to the Qualified Bidder's (and its direct and indirect owners and their principals') financial and other capabilities to consummate the Transaction contemplated by the Bid;
 - (e) is not conditional on:
 - (i) the outcome of unperformed due diligence;

- (ii) obtaining any financing, investment, or other funding requirements; and
 - (iii) any government or regulatory approval;
- (f) fully discloses the identity of each person that is bidding or otherwise that will be sponsoring or participating in the Bid, including direct and indirect owners and their principals, and the complete terms of such participation;
- (g) is accompanied by a cash deposit (the "**Deposit**") in the form of a wire transfer (to a trust account specified by the Monitor), in an amount equal to ten percent (10%) of the consideration to be paid in respect of the Bid, to be held and dealt with in accordance with the Sale Process;
- (h) includes a closing date of no later than June 21, 2024, subject to the Approval Order;
- (i) in the case of an Asset Bid, in addition to the other criteria in this section, it:
 - (i) includes a duly authorized and executed agreement and blackline to the Draft APA, together with all exhibits and schedules and such ancillary agreements as may be required with all exhibits and schedules;
 - (ii) specifies the purchase price, including any liabilities to be assumed;
 - (iii) indicates the Property included and any of the Property to be excluded and/or any additional assets desired to be included in the Transaction;
 - (iv) specifies the purchase price allocation as among the assets included in the Asset Bid;
- (j) in the case of a Restructuring Bid, in addition to the other criteria in this section, it:
 - (i) outlines the type of transaction or structure of the Bid, including any proposed restructuring, recapitalization, or other form of reorganization of the Business, Property, or affairs of the Company, including but not limited to the debt, share or capital structure of the Company, as applicable;
 - (ii) provides for payment in cash of the amounts owing to the Interim Lender, including the Pre-Filing Debt;
 - (iii) the aggregate amount of the debt and equity investment, including liabilities to be assumed;

- (iv) the underlying assumptions regarding the *pro forma* capital structure (including the anticipated post-Transaction debt levels, debt service fees, interest, and amortization);
 - (v) the consideration to be allocated to the stakeholders, including claims of any secured or unsecured creditors;
 - (vi) anticipated tax planning, if any;
 - (k) confirms that the Bid has all internal approvals and consents, including corporate, board or shareholder approval, that are required to close the Transaction;
 - (l) identifies any external approvals or consents, if any, that are required to close the Transaction and the anticipated timing to obtain such approvals or consents;
 - (m) includes any other information reasonably requested by the Monitor;
 - (n) includes an acknowledgement that the Bid is made on an "as-is, where- is" basis and that the Potential Bidder has had an opportunity to conduct any due diligence it considers necessary or desirable prior to making its Bid and has relied solely on its own independent review, investigation and inspection of the documents, assets to be acquired and the liabilities to be assumed; and
 - (o) is received by no later than the Bid Submission Deadline.
24. The Monitor may, in its discretion and with the consent of the Interim Lender, waive strict compliance with one or more of the requirements specified in paragraph 23 and deem any bid to be a Qualified Bid notwithstanding non-compliance with the terms and conditions of the Sale Process, including paragraph 23.

REVIEW OF BIDS AND SELECTION OF SUCCESSFUL BID(S) AND BACKUP BID(S)

25. In reviewing the Bids received the Monitor retains full discretion and authority to discuss the Bids received, and their terms, with the applicable Potential Bidders.
26. The Monitor will review all Bids received to determine the highest or otherwise best Bid(s). Evaluation criteria will include, but are not limited to:
- (a) the purchase price or net value being provided;
 - (b) the terms of the proposed transaction documents;
 - (c) the identity, circumstances, and ability of the bidder to successfully complete the contemplated transaction;
 - (d) the impact of the Bid on the Company's stakeholders;
 - (e) the conditionality of the Bid, including the firm, irrevocable commitment for any financing required;

- (f) the timeline to closing, including potential third-party contractual arrangements or consents required to close;
 - (g) the assets included, or excluded, from the proposed transaction;
 - (h) the identity, circumstances, and ability of the proponents to successfully complete a Transaction; and
 - (i) the costs associated with the Bid and its consummation, including restructuring costs.
27. The Monitor shall, in consultation with the Company and with the consent of the Interim Lender, identify the highest or otherwise best Qualified Bid received for the Property, or part or parts thereof, as applicable (each, a "**Successful Bid**") and the next highest or otherwise best Qualified Bid received for the Property, or part or parts thereof, as applicable (each, a "**Backup Bid**"). A person or persons who make a Successful Bid shall be a "**Successful Bidder**" and a person or person who makes a Backup Bid shall be a "**Backup Bidder**".
 28. The Monitor, after consulting with the Company and with the consent of the Interim Lender, shall notify a Successful Bidder, if any, a Backup Bidder, if any, and any other bidders of their respective status as soon as a reasonably practicable in the circumstances.
 29. The Monitor will notify a Backup Bidder, if any, that their bid is a successful Backup Bid and the Backup Bid shall remain open and capable of acceptance by the Company until the earlier of (i) the consummation of the transaction contemplated by a Successful Bid; and (ii) the date that is 30 days after the applicable Final Agreement Deadline, as defined in paragraph 30, (the "**Backup Bid Release Date**"). For greater certainty, the Monitor shall be entitled to continue to hold the Deposit in respect of a Backup Bid until the Backup Bid Release Date.
 30. The Company, with the consent of the Monitor and the Interim Lender, may, but shall have no obligation to, enter into an agreement or agreements with a Successful Bidder (a "**Final Agreement**"). Any Final Agreement entered into with a Successful Bidder shall be executed on or before **April 26, 2024** (the "**Final Agreement Deadline**").
 31. The Company, with the consent of the Monitor and the Interim Lender, has the right not to accept any Qualified Bid.
 32. The Monitor, in consultation with the Company and with the consent of the Interim Lender, further has the right to deal with one or more Qualified Bidders to the exclusion of other Persons, to accept a Qualified Bid for some or all of the Property, to accept multiple Qualified Bids and enter into multiple Final Agreements.

APPROVAL ORDER

33. If the Company enters into a Final Agreement in respect of a Successful Bid, a Backup Bid, or any other Bid, the Monitor shall apply for an order from the Court approving the transaction contemplated by that bid and any necessary or appropriate related relief required to consummate the transaction contemplated by that bid. Court approval shall be a condition precedent to the consummation of any transaction or transactions contemplated by a Final Agreement.

34. The Monitor may also:
- (a) concurrently obtain relief approving the transaction contemplated by a Backup Bid and any necessary related relief required to consummate the transaction contemplated by a Backup Bid; and
 - (b) if deemed necessary or advisable, seek approval of or other relief in respect of the Successful Bid and/or Backup Bid from the courts or governmental bodies in other relevant jurisdictions.

DEPOSITS

35. All Deposits paid pursuant to this Sale Process shall be held in trust by the Monitor in a non-interest-bearing account. The Monitor shall hold Deposits paid by each Successful Bidder and Backup Bidder in accordance with the terms of the Final Agreement with the Successful Bidder and the Backup Bidder, or as may be ordered by the Court.
36. If a Deposit is paid pursuant to this Sale Process, and the Company, acting through the Monitor, elects not to proceed to negotiate and settle the terms and conditions of a definitive agreement with the person that paid such Deposit, the Monitor shall return the Deposit.
37. If:
- (a) a Qualified Bidder breaches any of its obligations under its Qualified Bid, any Final Agreement, or the terms of this Sale Process (including the Confidentiality Agreement); or
 - (b) a Qualified Bidder breaches its obligations under the terms of this Sale Process (including the Confidentiality Agreement) or under the terms of its Qualified Bid if required by the Company to complete such transaction contemplated by its Qualified Bid,

then, in each case, such Qualified Bidder's Deposit will be forfeited as liquidated damages and not as a penalty.

ACCESS TO INFORMATION BY MANAGEMENT

38. Prior to receiving any information under this Sale Process, the Company's directors and senior management ("**Management**") shall each: (a) execute a confidentiality agreement in form satisfactory to the Monitor; and (b) confirm to the Monitor that they are not, directly or indirectly (including through affiliates or companies in which they control or have a majority ownership interest) participating in the preparation or submission of any bid, including for a potential Asset Bid or a potential Restructuring Bid (together, the "**Independence Confirmation**").
39. Members of Management that do not provide the Independence Confirmation are deemed to be potential bidders and are not entitled to receive information under this Sale Process and shall not attend meetings with, or otherwise communicate with, Qualified Bidders except with the written consent of the Monitor (which maybe provided by email) and which consent may be subject to conditions, including requiring the Monitor to attend such meetings or communications. For greater clarity, all references

to consultation with the Company in this Sale Process shall be limited to Management that have provided the Independence Confirmation.

OTHER MATTERS

40. The Sale Process does not, and will not be interpreted to, create any contractual or other legal relationship between the Company or the Monitor and any Potential Bidder, Qualified Bidder, or any other party, other than as specifically set out in an agreement executed by the Company or the Monitor, as applicable.
41. Participants in the Sale Process are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Bid, due diligence activities, and any other negotiations, steps, or actions, whether or not they lead to the consummation of a Transaction.
42. Notwithstanding the process and deadlines set out above, in consultation with the Company and with the prior consent of the Interim Lender, the Monitor may, at any time:
 - (a) pause, terminate, amend, or modify the Sale Process;
 - (b) remove any portion of the Business or the Property from the Sale Process;
 - (c) bring an application to the Court to seek approval of a transaction for the Property or the Business, whether or not such transaction is in accordance with the terms or timelines in this Sale Process; and
 - (d) establish further or other procedures for the Sale Process, provided that the service list in the CCAA Proceedings shall be advised of any substantive modification to the procedures set out in this Sale Process.

SCHEDULE "A"

Address for Deliveries

Any delivery made to the Monitor pursuant to this Sale Process shall be made to:

Alvarez & Marsal Canada Inc.
925 W Georgia Street
Unit 902
Vancouver BC V6C 3L2

Attention: Todd Martin and Taylor Poirier
Email: tmartin@alvarezandmarsal.com and tpoirier@alvarezandmarsal.com

Deliveries pursuant to this Sale Process by email shall be deemed to be received when sent. In all other instances, deliveries made pursuant to this Sale Process shall be deemed to be received when delivered to the address as identified above.