



FORCE FILED

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

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

NOTICE OF APPLICATION

Approval and Vesting Order, Sealing Order, and Order to Increase Receiver's Borrowing Charge

Name of Applicant: Alvarez & Marsal Canada Inc., in its capacity as Court-appointed Receiver and Manager (the "**Receiver**") of all of the assets, undertakings and properties of Bifano Consolidated Inc., Bifano Farms Inc., Nata Farms Inc., SSC Ventures (No. 105) Ltd. and Spallumcheen Farm Ltd. (collectively, "**Bifano**").

To: The Service List attached hereto as **Schedule "A"**

TAKE NOTICE that an application will be made by the Applicant to the Honourable Madam Justice Fitzpatrick at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia, on Wednesday, July 31, 2024, at 9:00 a.m for the orders set out in Part 1 below.

The Applicant estimates that the application will take 1 hour

- ☐ This matter is within the jurisdiction of an Associate Judge.
- ☒ This matter is not within the jurisdiction of an Associate Judge.

Part 1: ORDERS SOUGHT

1. Orders abridging the time for service of this Notice of Application to the time actually given and deeming service good and sufficient.

2. An Order substantially in the form attached hereto as **Schedule “B”**, approving the sale of, and vesting title in, certain assets and real property of Bifano, excluding certain leased and other assets (the **“Transaction”**), to Hallano Farm Holdings Inc. (the **“Purchaser”**), pursuant to a purchase and sale agreement (the **“Sale Agreement”**) dated July 19, 2024, and other ancillary relief.
3. An Order substantially in the form attached hereto as **Schedule “C”**, sealing the Confidential Affidavit of Todd Martin, made July 25, 2024 (the **“Confidential Affidavit”**) in the Court file.
4. An Order substantially in the form attached hereto as **Schedule “D”**, increasing the Receiver’s Borrowings Charge.
5. Such further and other relief as counsel may request and this Court may grant.

Part 2: FACTUAL BASIS

Background

The CCAA Proceedings

6. All capitalized terms used but not otherwise defined in this Notice of Application shall have the meaning given to them in the First Report of the Receiver dated July 26, 2024 (the **“First Report”**), as applicable.
7. Pursuant to an Order of the Court made on February 28, 2024 (the **“Initial Order”**), the Respondents were granted protection under the CCAA and Alvarez & Marsal Canada Inc. (**“A&M”**) was appointed monitor of the Respondents (in such capacity, the **“Monitor”**).
8. Pursuant to the terms of the Initial Order, the Court, among other things, granted a stay of proceedings until March 11, 2024 and set March 11, 2024 as the date for a comeback hearing (the **“Comeback Hearing”**) in these proceedings.
9. On March 11, 2024, this Court granted an Amended and Restated Initial Order (the **“ARIO”**), which, among other things, extended the stay of proceedings until May 24, 2024 and also granted an order setting out a Sale and Investment Solicitation Procedure (the **“SISP”**).
10. By Order of the Court dated May 21, 2024, the stay of proceedings was extended to July 12, 2024.
11. Ultimately, the SISP did not result in a successful bid, and on June 24, 2024, the CCAA proceedings were converted to receivership proceedings.

The Receivership Proceedings

12. Pursuant to an Order of the Court dated June 24, 2024 (the “**Receivership Order**”), A&M was discharged as the Monitor and was appointed as the Receiver. Pursuant to the Receivership Order, the Receiver is authorized to sell all of the assets of Bifano.

The Receiver’s Activities

13. As noted in the First Report, the Receiver has undertaken various activities, including the following:

Possession and Securing the Assets of Bifano

- (a) Upon the Receivership Order being granted, the Receiver, among other things, took the following steps to take possession and secure the assets of Bifano:
 - i. dispatched letters to various parties informing them of the Receivership, including the Bank of Nova Scotia to put all of Bifano’s bank accounts under the control of the Receiver and to insurance providers to amend the named insured and loss payee on the Company’s insurance policies;
 - ii. completed an inventory count of the cattle and a survey of supply inventories; and
 - iii. physically inspect all on site equipment (leased and otherwise) and compared it to appraised value listings.¹

Ongoing Management of Dairy Operations

- (b) negotiating and reviewing the daily cash receipts into Bifano’s accounts, reconciled to the bank statements and arranging for periodic sweeps of the deposits, including milk receipts, to the Receiver’s trust account;
- (c) reviewing Bifano’s planned disbursements and issuing payments from the Receiver’s trust account;
- (d) on-going dialogue and consultation with Bifano employees and the Petitioner in respect of day to day operations and cash management matters;
- (e) notifications to employees of Bifano regarding the Receivership Order and the on-going operations of the Bifano dairy farm;²

The Sale Agreement and the Transaction

- (f) negotiating with the Purchaser and its financial and legal advisors and reviewing the Sale Agreement, including liaising with the Receiver’s counsel and Petitioner’s counsel regarding the terms of the Sale Agreement;

¹ The First Report, para 4.1 (a)(i) – ((iii)).

² *Ibid*, para 4.1 (b) – (e).

- (g) performing detailed reviews of the Sale Agreement schedules and providing comments to the Purchaser's counsel;
- (h) attending to any *ad hoc* requests in respect of the Sale Agreement;³

Cash Management and Preparation of Rolling Cash Flow Forecasts

- (i) with input from Bifano employees, the Receiver has been updating various versions of an extended cash flow forecast to manage and forecast the Receiver's funding requirements;
- (j) preparation of requests for borrowings and issuance of a Receiver's Certificate pursuant to the terms of the Receivership Order;⁴

Statutory Duties of the Receiver and Statutory Creditors

- (k) preparation and dispatch of statutory notices to creditors pursuant to the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended; and
- (l) preparation of a newspaper advertisement pursuant the *Personal Property Security Act*, R.S.B.C. 1996, c. 359.⁵

The Sale Agreement

14. As noted in the First Report of the Monitor, in July 2023, with the assistance of a third-party financial advisor, Bifano undertook a sales process to sell its dairy and trucking businesses. This process did not conclude with a transaction.⁶
15. As noted in the Monitor's Third Report, the Sale Process (as defined therein) was launched by the Monitor on or around March 15, 2024 with a deadline for the submissions of bids by May 10, 2024. A total of 43 targeted interested parties were sent teasers that outline the Bifano acquisition opportunity with 10 non-disclosure agreements signed and 3 bids received none of which were deemed to be Qualified Bids (as defined in the SISP).
16. The Sale Process did not result in any bid being deemed a Successful Bid and on May 24, 2024 the Petitioner (the Bank of Nova Scotia) formally advised the Monitor that it did not support advancing any of the bids received as a "Successful Bid". The Purchaser, who was one of the parties who made a bid in the Sale Process, had proposed revised terms subsequent to the submission of its original bid at the Bid Deadline (as defined in the SISP) of May 10, 2024. The Monitor confirmed to the Purchaser that terms of the proposed revised offer by the Purchaser were not acceptable.⁷

³ *Ibid*, para 4.1 (f) – (h).

⁴ *Ibid*, para 4.1 (i) – (j).

⁵ *Ibid*, para 4.1. (k) – (l).

⁶ First Report of the Monitor, para 8.7

⁷ The First Report, paras 3.1 – 3.2.

17. On June 24, 2024 the Court granted the Receivership Order and the Receiver commenced planning for the liquidation of Bifano's assets and undertakings. The Purchaser subsequently advised the Receiver that it was prepared to make a revised going concern offer in respect of the assets and undertakings or business of Bifano. The Petitioner confirmed that it was supportive of the Receiver re-engaging with the Purchaser with the goal of advancing a going concern transaction to complete on/or before July 31, 2024.⁸
18. On July 19, 2024, the Receiver and the Purchaser executed the Sale Agreement, a redacted copy of which is attached to the First Report as Appendix "A".⁹
19. In summary, the Transaction contemplates the sale all of Bifano's right, title and interest, in and to all assets and properties of Bifano, excluding the Excluded Assets on an as-is, where-is basis with a full and unequivocal release of SSC and Bifano Farms.¹⁰
20. An un-redacted copy of the Sale Agreement has been attached to the confidential affidavit of Todd Martin, made July 25, 2024 (the "**Confidential Affidavit**"). In respect of this matter, the Receiver is seeking this Honourable Court's approval to have the Confidential Affidavit sealed pursuant to a Sealing Order to preserve the confidentiality of certain information contained in the Sale Agreement, principally the Purchase Price and Schedule F - "Purchase Price Allocation" which is attached to Sale Agreement. Should the Transaction not close, the Receiver may seek to re-market the assets of Bifano and if the financial information is disclosed it could negatively impact the Receiver's ability to elicit competitive bids.¹¹

Key Commercial Terms of the Sale Agreement

21. The key commercial terms of the Sale Agreement are detailed in the table below:

Parties	The Receiver (Vendor) and the Purchaser Farm Holdings Inc. (Purchaser)
Purchase Price	<ul style="list-style-type: none"> - Amount redacted; refer to the Confidential Affidavit. - Deposit of 10% of the Purchase Price. (The deposit was remitted to the Receiver on July 19, 2024).
Purchased Assets	<ul style="list-style-type: none"> - All of the Vendor's right, title and interest, in and to all assets and properties of the Companies used or held in Bifano's business, excluding the Excluded Assets, but including, without limitation:

⁸ *Ibid*, para 3.3.

⁹ *Ibid*, para 3.4.

¹⁰ *Ibid*, para 3.6

¹¹ *Ibid*, para 3.5.

	<ul style="list-style-type: none"> a) approximately 800 acres located near Armstrong, BC; b) certain chattels (including equipment used in the dairy operations but excluding equipment that is subject to security interest of certain lessors); c) certain contracts; d) inventories (including livestock and farm supplies); e) certain fixed assets and equipment; f) business records of Bifano businesses; and g) certain permits, licenses and farming related certifications. <p>- The sale of assets by the Receiver is expressly made on an “as-is where-is” basis.</p>
Excluded Assets	<ul style="list-style-type: none"> - All of the Companies’ right, title, and interest in and to the following: <ul style="list-style-type: none"> a) all shares of capital stock or other equity interest in securities in any Bifano related or affiliated entity; b) leased equipment; and c) owned and managed milk quota (collectively, “Quota”) held by SSC.
Excluded Liabilities	<ul style="list-style-type: none"> - Liabilities of the Companies that were not expressly assumed by the Purchaser under the Sale Agreement, including without limitation: <ul style="list-style-type: none"> a) any costs or expenses associated with packaging and shipping any leased equipment or Excluded Assets (as defined in the Sale Agreement) to third parties; b) any taxes of or relating to Bifano’s business or assets, including statutory deductions and remittances, GST, and sales taxes, in respect of any period prior to the Closing Date (as defined in the Sale Agreement); c) any liabilities or encumbrances in respect of any litigation involving the Companies, commenced or

	<p>threatened or resulting from any event or circumstance prior to the Closing Date;</p> <p>d) any other encumbrances made, filed, claimed, perfected or otherwise arising or resulting from any event or circumstance prior to the Closing Date;</p> <p>e) any liabilities owing to or encumbrances claimed by or in favour of any employees that relate to any period prior to Closing Date, including without limitation outstanding salaries, wages and bonuses owing to any employees, any severance or other termination obligations, including payment in lieu of notice, and any liability for employer health tax payable;</p> <p>f) all executive personnel agreements, officer or director agreements, employee benefit plans or payments, pension obligations, employee tax withholding obligations, employee health or dental plan obligations, all employee complaints or claims, labour relations board actions or other employee proceedings;</p> <p>g) contracts which are not assumed by the Purchaser;</p> <p>h) all liabilities for payment of fees for operation of the Bifano operations up to the Closing Date (other than amounts payable or paid by the Purchaser as Extension Costs (as defined in the Sale Agreement) should the Close Date be extended; and</p> <p>i) any other assets, property or obligations which pursuant to the terms and conditions of the Sale Agreement, remain the property of the Companies or the Receiver after the completion of the transactions contemplated herein including, without limitation, the rights of the Vendor under this Agreement.</p>
<p>Transaction Subject to Court Approval and Granting of an Approval and Vesting Order</p>	<p>- The Approval and Vesting Order shall among other things:</p> <p>a) authorize and approve the Sale Agreement and the execution and delivery thereof by the Receiver on behalf of the Companies;</p> <p>b) authorize and direct the Receiver to complete the Transaction;</p>

	<ul style="list-style-type: none"> c) vest the Purchased Assets in the Purchaser; d) vest off title to the Purchased Assets all Encumbrances other than Permitted Encumbrances; e) provide a full and unequivocal release of SSC and Bifano Farms from any and all Excluded Liabilities and Encumbrances other than Permitted Encumbrances, and discharge and remove SSC and Bifano Farms as parties from the CCAA Proceedings and from the purview of any orders made in the CCAA Proceedings (refer to Section 3.8 below); and f) vest off of all Encumbrances (other than Permitted Encumbrances) charging the assets of SSC and Bifano Farms, including the Owned Quota (but excluding, for greater clarity, the bare trust attaching to the Managed Quota (defined below)).
Mutual Condition	<ul style="list-style-type: none"> - The obligation of the Parties to complete the Transaction will be subject to the mutual condition, for the benefit of both the Vendor and the Purchaser that on or before July 31, 2024, the Receiver will have obtained the Approval and Vesting Order.
Closing Date	<ul style="list-style-type: none"> - 10 days after the Approval and Vesting Order is pronounced by this Court (expected to be no later than August 12, 2024).
Extension of Closing Date	<ul style="list-style-type: none"> - The Purchaser may, on a one-time basis, unilaterally extend the Closing Date by up to 30 days subject to the requirement to pay Extension Costs to the Receiver.¹²

22. As noted above, one of the Excluded Assets referenced in the Sale Agreement is the interest of Bifano Farms Inc. in and to approximately 484 kgs/day of milk quota (“**Owned Quota**”) and approximately 416 kgs/day of milk quota (“**Managed Quota**”), the beneficiaries of which are 5 individual third parties who have entered into management agreements with SSC to allow the use of the Managed Quota by Bifano.¹³
23. The Sale Agreement specifically excludes the Owned Quota and Managed Quota from the Transaction. The ownership of Owned and Managed Quota is to remain with SSC which is a special purpose entity used to hold the respective milk quota interests as bare trustee

¹² *Ibid*, para 3.7.

¹³ *Ibid*, para 3.8.

of the beneficial owners. Both the B.C. Milk Marketing Board (“**BCMMB**”) and the respective individual owners of the Managed Quota were both made aware of the terms of the Transaction and have confirmed that the terms of the Transaction as explained are acceptable.¹⁴

24. In order to effect a going concern sale to the Purchaser, who is arms-length from and not related to Bifano, and facilitate the continuity of milk production pursuant to BCMMB regulations, SSC and Bifano Farms entities have been in effect “carved out” of the Transaction such that the ownership of the Owned and Managed Quota does not change hands nor is there a transfer of the respective Quota amounts.¹⁵
25. In consideration of the Purchase Price, the Receiver will seek an order from this Court discontinuing these proceedings as against SCC and Bifano Farms and releasing SCC and Bifano Farms from all claims of the Petitioner as well as the CCAA Charges (as defined in the Sale Agreement).¹⁶
26. The Receiver considers the Transaction and the Sale Agreement to be commercially reasonable in the circumstances based on the following:
 - (a) the Sale Process conducted by the Monitor during the pendency of the CCAA Proceedings prior to the Receivership Order allowed for a satisfactory canvassing of the market for the Bifano as a going concern. In addition, Bifano and its third-party financial advisor previously canvassed the market when Bifano conducted its own sales process in July 2023, pursuant to which the assets and businesses of Bifano were marketed to a number of strategic third parties, many of whom were included in the SISP conducted by the Monitor;
 - (b) the Monitor conducted the Sale Process in a fair manner recognizing the interests of all parties including, but not limited to:
 - (i) the Petitioner, the Bank of Nova Scotia as senior secured and fulcrum creditor;
 - (ii) the owners of the Owned and Managed Quota;
 - (iii) the BCMMB;
 - (iv) various third-party lessors of equipment and assets used in Bifano’s operations; and
 - (v) the Bifano entities including the shareholders;

¹⁴ *Ibid*, para 3.9

¹⁵ *Ibid*, para 3.10.

¹⁶ *Ibid*, para 3.11.

- (c) the Sale Process was not subject to any compromise of the SISP that was approved by the Court that would call into question the overall efficacy and/or integrity of the Sale Process;
- (d) the Petitioner (the fulcrum secured creditor) who will be incurring a material shortfall with respect to the indebtedness of Bifano to the Petitioner, is supportive of the PSA's terms, including the Purchase Price;
- (e) as noted, the general terms and structure of the Transaction have been discussed with the BCMMB, which has indicated that they would not oppose the Transaction;
- (f) Bifano has provided the Receiver with written confirmation from all Managed Quota holders confirming their support for the Transaction;
- (g) the Transaction contemplates a going concern sale, which would result in the continued production of a relatively large dairy farm in the Province of BC, resulting in the continued employment for the Company's employees and may benefit other commercial stakeholders in the region;
- (h) the Transaction is not conditional on any financing or other conditions expected to delay closing of the Transaction; and
- (i) the Purchase Price, as defined in the AVO, is higher than the estimated liquidation value set out in the Monitor's Confidential Supplement to the Third Report to the Court dated June 19, 2024.¹⁷

Increase to the Receiver's Borrowings Charge

- 27. As set out in paragraph 31 of the Receivership Order, the current authorized borrowing limit secured by the Receiver's Borrowings Charge is \$500,000.
- 28. The Sale Agreement allows for the Purchaser to unilaterally extend the Closing Date by up to 30 days and is required to pay Extension Costs on a per diem basis up until the amended Closing Date. The Receiver notes that its current authorized borrowing limit of \$500,000 will not be sufficient to maintain Bifano's operations should the Purchaser seek an extension of time to close the Transaction.¹⁸
- 29. Given the possibility that the Transaction's Closing Date could be extended, the Receiver is seeking to increase the Receiver's Borrowing Limit to \$1,000,000 in order to be in a position to fund the ongoing operations of Bifano should there be a delay in closing the Transaction.¹⁹
- 30. The Receiver is satisfied that any additional borrowings does not prejudice any stakeholders as any additional financing will be used to fund ongoing operations in order

¹⁷ *Ibid*, para 3.12.

¹⁸ *Ibid*, para 5.5.

¹⁹ *Ibid*, para 5.6.

to complete the Transaction and the fulcrum secured creditor is funding the Receiver's Certificates.²⁰

31. The Receiver is of the view that the increase to the Receiver's Borrowings Charge is appropriate to ensure that Bifano's operations continue to be funded, during the period of time required to complete the Transaction.²¹

Part 3: LEGAL BASIS

Approval of the Purchase Agreement and the Transaction

32. The factors that the Court ought to consider with respecting to the approval of a sale in receivership proceedings are set out in *Royal Bank of Canada v. Soundair Corp.* ("*Soundair*"). The factors to be considered are:

- (a) whether the receiver has made a sufficient effort to get the price and has not acted improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which the offers are obtained; and
- (d) whether there has been unfairness in the working out of the process.

Royal Bank of Canada v. Soundair Corp., 1991 CanLII 2727 (ON CA) at p. 8-9.

33. While a receiver's primary concern is the interest of the debtor's creditors, other persons' interests require consideration as well. This may include the interests of a purchaser who has negotiated an agreement with a court appointed receiver or the interests of the debtor.

Soundair at p. 16.

34. Ultimately, this Court should be satisfied that the receiver acted prudently and in a commercially reasonable manner, did not act improvidently, and that there was integrity to the process, such that there was no unfairness, having regard to the interests of all parties. If so, then the offer recommended by the receiver, as the court's officer, ought to be approved.
35. In the present circumstance, the Monitor canvassed the market during the SISP conducted in the CCAA Proceedings. In addition, Bifano and its third-party financial advisor previously canvassed the market when Bifano conducted its own sales process in July

²⁰ *Ibid*, para 5.7.

²¹ *Ibid*, para 5.8.

2023, pursuant to which the assets and businesses of Bifano were marketed to a number of strategic third parties, many of whom were included in the SISP conducted by the Monitor.

36. The Sales Process was not subject to any compromise of the SISP that was approved by this Court that would call into question the efficacy and integrity of the Sales Process.
37. In addition, the Sales Process was conducted in a fair manner recognizing the interest of all parties, including, among others:
 - (a) the Petitioner, as senior secured and fulcrum creditor, who is supportive of the Transaction notwithstanding it will be incurring a material shortfall with respect to the Indebtedness owing to it by Bifano;
 - (b) the owners of the Owned Quota;
 - (c) the owners of the Managed Quota, who have confirmed to Bifano that they are supportive of the Transaction;
 - (d) the BCMMB;
 - (e) various third-party lessors of equipment and assets used in Bifano's operations; and
 - (f) the Bifano entities including the shareholders.
38. The Sales Process was undertaken to solicit fair and reasonable offers with a view to maximizing the realization of Bifano. The Purchaser was initially identified during the Sales Process.
39. The Purchase Price of the Transaction is the highest and best offer received by the Receiver and, notably, exceeds the estimated liquidation value for Bifano.
40. In light of the foregoing, it is clear that the Receiver in its present capacity and in its previous capacity as Monitor, has made all reasonable efforts to get the best price, using an efficient process that resulted in the Sale Agreement. Ultimately, the Receiver has acted prudently and in a commercially reasonable manner with respect the Sale Agreement and the Transaction. The process followed by the Receiver was fair and transparent and took into account the interests of all parties.

Sealing Order for the Confidential Affidavit

41. The Receiver seeks to file the Confidential Affidavit under seal.
42. The test for a sealing order is set out in the Supreme Court of Canada decision in *Sherman Estate v. Donovan*, which reframed the two-step inquiry in the *Sierra Club* test into three-steps, requiring an applicant for a sealing order to establish that:

- (a) court openness poses a serious risk to an important public interest;
- (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

***Sherman Estate v. Donovan*, 2021 SCC 25, 458 DLR (4th) 361, at para 38.**

- 43. In restructuring and liquidation proceedings under Canadian insolvency statutes, courts regularly grant time-limited sealing orders over pricing and related information contained in conjunction with sale approval orders, in order to avoid jeopardizing any subsequent sales process that might occur if the approved sale does not close.
- 44. The Ontario Superior Court of Justice also recently confirmed that protection of a sales process and the maximization of recovery in such a process is an important public interest that justifies granting a limited sealing order.

***Rose-Isli Corp. v. Frame Tech Structures Ltd.*, 2023 ONSC 832, 6 CBR(7th) 129 (Ont SCJ), at paras 137-141.**

- 45. Sealing the Confidential Affidavit is appropriate in the circumstances. The interest of the Respondents and their creditors in protecting the integrity of the sales process for the Respondents' assets is an important public interest.
- 46. The Confidential Affidavit, which the Receiver seeks to seal, contains commercially sensitive valuation information respecting the Purchase Price and Purchase Price Allocation. In the event the Transaction were not to close, the Receiver may seek to re-market the assets of Bifano. Were this information to be publically disclosed, it would negatively impact the Receiver's ability to obtain competitive bids from other potential purchasers.
- 47. The Sealing Order sought is limited in time and scope and is proportional to the interests of all parties. The limited nature of the Order means interference with the court openness principle is also limited. There is no reasonable alternative to the limited Sealing Order sought. It is therefore appropriate to grant the proposed Sealing Order over the Confidential Affidavit.

Increase to the Receiver's Borrowings Charge

- 48. In the event the Purchaser exercises its right to unilaterally extend closing of the Transaction, the Receiver's current borrowing limit is not sufficient to maintain Bifano's operations during that time.

49. The increase to the borrowings charge sought by the Receiver do not prejudice any stakeholders, as the additional funding is requiring to fund ongoing operations in order to complete the Transaction. The Petitioner, as fulcrum creditor, is funding the Receiver's Certificates.
50. As a result, the increase in borrowing power is required to ensure that the operations can be continued without interruption for the benefit of all stakeholders.

Part 3: MATERIAL TO BE RELIED ON

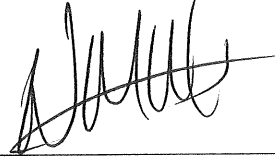
51. The Receivership Order.
52. The First Report.
53. The Confidential Affidavit of Todd Martin, made July 25, 2024.
54. The Pre-Filing Report of the Monitor dated February 16, 2024.
55. The First Report of the Monitor dated March 7, 2024.
56. The Second Report of the Monitor dated May 16, 2024.
54. The Third Report of the Monitor dated June 19, 2024.
57. The Confidential Supplement to the Third Report of the Monitor dated June 19, 2024.
58. Such further and other material as counsel may advise and this Honourable Court may consider.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application.

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed Application Response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

- (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated at the City of Vancouver, in the Province of British Columbia, this 26th day of July 2024.



Lawson Lundell LLP,
Solicitors for the Applicant, Alvarez & Marsal
Canada Inc., in its capacity as Receiver of all
of the assets, undertakings and properties of
Bifano Consolidated Inc., Bifano Farms Inc.,
Nata Farms Inc., SSC Ventures (No. 105) Ltd.
and Spallumcheen Farm Ltd.

This Notice of Application is filed by Bryan C. Gibbons, of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, BC, V6C 3L2; Telephone No: 604-631-9152; Email: bgibbons@lawsonlundell.com.

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs _____ of
Part 1 of this Notice of Application

☐ with the following variations and additional terms:

Date:

Signature of ☐ Judge ☐ Master

APPENDIX

The following information is provided for data collection purposes only and is of no legal effect.

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☒ none of the above

SCHEDULE "A"**Service List**

No. S241161
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

SERVICE LIST

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<p>LAWSON LUNDELL LLP 925 West Georgia Street, Suite 1600 Vancouver, BC V6C 3L2</p> <p>Bryan Gibbons Direct: 604.631.9152 Email: bgibbons@lawsonlundell.com</p> <p>Noor Mann Direct: 604.631.9161 Email: nmann@lawsonlundell.com</p> <p><i>Counsel for Alvarez & Marsal Canada Inc., in its capacity as Monitor</i></p>	<p>DENTONS CANADA LLP 250 Howe Street 20th floor Vancouver, BC V6C 3R8</p> <p>Jordan Schultz Direct: 604.691.6452 Email: jordan.schultz@dentons.com</p> <p>Chelsea Denton Email: chelsea.denton@dentons.com</p> <p><i>Counsel for Bifano consolidated Inc., Bifano Farms Inc., SSC Ventures (No. 105) Ltd. and Spallumcheen Farm Ltd.</i></p>
<p>OWEN BIRD LAW CORPORATION 733 Seymour Street #2900 Vancouver, BC V6B 0S6</p> <p>Heather Frydenlund Direct: 604.691.7532 Email: hfrydenlund@owenbird.com</p> <p>Scott Stephens Email: sstephens@owenbird.com</p> <p><i>Counsel for CWB National Leasing Inc.</i></p>	<p>KPMG LLP 777 Dunsmuir Street Vancouver, BC V7Y 1K3</p> <p>Huey Lee Email: hueylee@kpmg.ca</p> <p><i>Advisors to Respondents</i></p>
<p>SMITH HERSEY AGRIBUSINESS LAW LLP #104, 2201 Box Springs Blv. N.W. Medicine Hat, AB T1C 0C8</p> <p>Simon J. Hersey Direct: 604.527.5506 Email: simon@smithhersey.com</p> <p>Mervin E. Kwok Direct: 604.527.5506 Email: mervin@smithhersey.com</p> <p>Hannah Smith Email: hannah@smithhersey.com</p> <p><i>Counsel for Cor Nine Inc.</i></p>	<p>GOWLING WLG (CANADA) LLP Suite 2300, Bentall 5 550 Burrard Street Vancouver BC V6C 2B5</p> <p>Jonathan Ross Direct: 604.891.2778 Email: jonathan.ross@gowlingwlg.com</p> <p><i>Counsel for Bank of Montreal Transportation Finance</i></p>

<p>OSLER, HOSKIN & HARCOURT LLP 1055 Dunsmuir Street, Suite 3000 Vancouver, BC V7X 1K8</p> <p>Mary Buttery, K.C. Direct: 604-692-2752 Email: mbuttery@osler.com</p> <p>Christian Garton Direct: 604.692.2719 Email: cgarton@osler.com</p> <p><i>Counsel for Sure Crop Feeds</i></p>	<p>FIELD LLP 400 – 444 7 Ave SW Calgary, AB T2P 0X8</p> <p>Jill Bishop Direct: 587-956-2761 Email: jbishop@fieldlaw.com;</p> <p>Geta Grant Email: ggrant@fieldlaw.com <i>Counsel for CNH Industrial Capital Canada Ltd.</i></p>
<p>FULTON & COMPANY LLP 300 – 350 Lansdowne Street Kamloops, BC V2C 1Y1</p> <p>Graham Mack Direct: 250.372.5542 Email: GMack@fultonco.com</p> <p><i>Counsel for Urban Holdings Ltd.</i></p>	<p>DENTONS CANADA LLP 77 King Street West, Suite 400 Toronto, ON M5K 0A1</p> <p>Elaine Gray Direct: 416.863.4775 Email: elaine.gray@dentons.com</p> <p><i>Counsel for Daimler Truck Financial Services Canada Corporation</i></p>
<p>DEPARTMENT OF JUSTICE TAX LAW SERVICES</p> <p>Yianni Pappas Email: Yianni.Pappas-Acreman@justice.gc.ca</p> <p>Erin Krawchuk Email: Erin.Krawchuk@justice.gc.ca</p> <p>Angela Lam Email: Angela.Lam@justice.gc.ca</p> <p>Sunmeet Dhaliwal Email: Sumeet.Dhaliwal@justice.gc.ca;</p> <p>AGC_PGC_VANCOUVER@JUSTICE.GC.CA</p> <p><i>Counsel for the Attorney General of Canada on behalf of HMTK in Right of Canada as represented by the Minister of Notional Revenue</i></p>	<p>MILLER THOMSON LLP 700 West Georgia Street, Suite 2200 Vancouver, British Columbia V7Y 1K8</p> <p>Bryan Hicks Direct: 604.643.1242 Email: bjhicks@millertomson.com</p> <p>Robert Anderson Email: randerson@millertomson.com</p> <p><i>Counsel for Hallano Farm Holdings Inc.</i></p>

JUSTICE, HEALTH AND REVENUE GROUP LEGAL SERVICES BRANCH / MINISTRY OF ATTORNEY GENERAL 2nd Floor - 1001 Douglas Street Victoria, BC V8W 9J7 <u>AGLSBRevTaxInsolvency@gov.bc.ca</u> <i>Counsel for the Province of British Columbia</i>	BC MILK MARKETING BOARD 540-19933 88th Avenue Langley, BC, V2Y 4K5 Kathy Wallis, Quota Officer Email: <u>KWallis@bcmilk.com</u> Zahra Abdalla-Shamji, Director, Policy & Industry Affairs Email: <u>zabdalla@bcmilk.com</u>
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SCHEDULE B

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

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

APPROVAL AND VESTING ORDER

BEFORE THE HONOURABLE MADAM
JUSTICE FITZPATRICK

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)
)
)

WEDNESDAY, THE 31ST DAY
OF JULY 2024

ON THE APPLICATION of Alvarez & Marsal Canada Inc., in its capacity as Court-appointed Receiver and Manager (the “**Receiver**”) of all of the assets, undertakings and properties of Bifano Consolidated Inc., Bifano Farms Inc., Nata Farms Inc., SSC Ventures (No. 105) Ltd. and Spallumcheen Farm Ltd. (collectively, “**Bifano**”) coming on for hearing at Vancouver, British Columbia, on the 31st day of July 2024; AND ON HEARING Bryan C. Gibbons and Noor Mann, counsel for the Receiver, and those other counsel listed on **Schedule “A”** hereto, and no one else appearing, although duly served; AND UPON READING the material filed, including the First Report of the Receiver dated July 26, 2024 (the “**First Report**”)

THIS COURT ORDERS AND DECLARES THAT:

Service

1. The time for service of this Notice of Application and supporting materials is hereby abridged so that the application is properly returnable on July 31, 2024, and the need for further service of the Notice of Application and supporting materials is hereby dispensed with.

Approval of Transaction

2. The sale transaction (the “**Transaction**”) contemplated by the Purchase and Sale Agreement dated July 19, 2024 (the “**Sale Agreement**”) between the Receiver and Hallano Farm Holdings Inc. (the “**Purchaser**”), a redacted copy of which is attached as Appendix A to the First Report is hereby approved, and the Sale Agreement is commercially reasonable. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to the Purchaser of the assets described in the Sale Agreement (the “**Purchased Assets**”).
3. Upon delivery by the Receiver to the Purchaser of a certificate substantially in the form attached as **Schedule “B”** hereto (the “**Receiver’s Certificate**”), all of Bifano’s right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on **Schedule “C”** hereto shall vest absolutely in the Purchaser in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of this Court dated February 28, 2024, as amended and restated March 11, 2024, and by the Order of this Court dated June 24, 2024 (collectively, the “**CCAA Charges**”); and (ii) all charges, security interests or claims evidenced by registrations pursuant to the Personal Property Security Act of British Columbia or any other personal property registry system; and (iii) those Claims listed on **Schedule “D”** hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule “E”** hereto), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.
4. Upon delivery by the Receiver to the Purchaser of the Receiver’s Certificate, Bifano Farms Inc. and SSC Ventures (No. 105) Ltd. (together, the “**Released Entities**”) shall be released from any and all Claims of the Petitioner and all Encumbrances securing those Claims and from the CCAA Charges, and the Released Entities shall cease to be Respondents in these proceedings and shall be deemed released from the purview of all orders of this Court granted in these proceedings, save and except for this order, and the style of cause shall be amended accordingly.
5. Upon presentation for registration in the Land Title Office for the Land Title District of Kamloops of a certified copy of this Order, together with a letter from Lawson Lundell LLP, solicitors for the Receiver, authorizing registration of this Order, the British Columbia Registrar of Land Titles is hereby directed to:

- (a) enter the Purchaser as the owner of the Lands, as identified in **Schedule "C"** hereto, together with all buildings and other structures, facilities and improvements located thereon and fixtures, systems, interests, licenses, rights, covenants, restrictive covenants, commons, ways, profits, privileges, rights, easements and appurtenances to the said hereditaments belonging, or with the same or any part thereof, held or enjoyed or appurtenant thereto, in fee simple in respect of the Lands, and this Court declares that it has been proved to the satisfaction of the Court on investigation that the title of the Purchaser in and to the Lands is a good, safe holding and marketable title and directs the BC Registrar to register indefeasible title in favour of the Purchaser as aforesaid; and
 - (b) having considered the interest of third parties, to discharge, release, delete and expunge from title to the Lands all of the registered Encumbrances except for those listed in **Schedule "E"**.
- 6. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Receiver's Certificate all Claims shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.
- 7. The Receiver is to file with the Court a copy of the Receiver's Certificate forthwith after delivery thereof.
- 8. Pursuant to Section 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act* or Section 18(10)(o) of the *Personal Information Protection Act* of British Columbia, the Receiver is hereby authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the company's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and 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 Bifano.
- 9. Subject to the terms of the Sale Agreement, vacant possession of the Purchased Assets, including any real property, shall be delivered by the Receiver to the Purchaser at 12:00 noon on the Closing Date (as defined in the Sale Agreement), subject to the permitted encumbrances as set out in the Sale Agreement and listed on **Schedule "E"**.
- 10. The Receiver, with the consent of the Purchaser, shall be at liberty to extend the Closing Date to such later date as those parties may agree without the necessity of a further Order of this Court.
- 11. Notwithstanding:
 - (a) these proceedings;

(b) any applications for a bankruptcy order in respect of Bifano now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made by or in respect of Bifano,

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of Bifano and shall not be void or voidable by creditors of Bifano, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

12. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
13. The Receiver or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.
14. Endorsement of this Order by counsel appearing on this Application 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:

BRYAN C. GIBBONS
Lawyer for the Receiver, Alvarez & Marsal
Canada Inc.

By the Court.

Registrar

SCHEDULE "A"

List of Counsel

Counsel	Party
Bryan C. Gibbons Noor Mann	The Receiver, Alvarez & Marsal Canada Inc.
Lisa Hiebert Mishaal Gill	The Bank of Nova Scotia

SCHEDULE “B”

Receiver’s Certificate

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**

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

Receiver’s Certificate

RECITALS

A. Pursuant to an Order of the Supreme Court of British Columbia (the “**Court**”) dated June 24, 2024 (the “**Receivership Order**”), Alvarez & Marsal Canada Inc. was appointed as Receiver and Manager (the “**Receiver**”) of all of the assets, undertakings and properties of Bifano Consolidated Inc., Bifano Farms Inc., Nata Farms Inc., SSC Ventures (No. 105) Ltd. and Spallumcheen Farm Ltd. (collectively, the “**Debtor**”).

B. Pursuant to an Order of the Court dated July 31, 2024 (the “**Approval and Vesting Order**”), the Court approved the Purchase and Sale Agreement dated July 19, 2024 (the “**Sale Agreement**”) between the Receiver and Hallano Farm Holdings Inc. (the “**Purchaser**”), providing for the vesting in the Purchaser of all of the right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 8 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Approval and Vesting Order or the Sale Agreement, as applicable.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price, as defined in the Sale Agreement, for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing set out in Article 8 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.

This Certificate was delivered by the Receiver at Vancouver, BC this ___ day of July, 2024.

ALVAREZ & MARSAL CANADA INC.,
in its capacity as Receiver and Manager of all
of the assets, undertakings and properties of
Bifano Consolidated Inc., Bifano Farms Inc.,
Nata Farms Inc., SSC Ventures (No. 105) Ltd.
and Spallumcheen Farm Ltd.

Per: _____
Todd Martin

SCHEDULE "C"

Purchased Assets

1. The following, each as defined in the Sale Agreement:
 - a. the Chattels;
 - b. the Purchased Contracts;
 - c. the Inventory;
 - d. the Business Records; and
 - e. the Permits, Licenses and Certifications;
2. All of the intangible assets of Bifano Consolidated Inc., Nata Farms Inc. and Spallumcheen Farm Ltd.; and
3. The following lands, including all buildings, structures, improvements and all appurtenances and attachments thereto:

Bifano Consolidated Inc. - Real Property

Title 1

PID: 030-083-893

Legal Description: Lot 1 Sections 12, 13, 18 and 26 Township 18 and 35 Range 8 and 9 West of the 6th Meridian Kamloops Division Yale District Plan EPP68311

Spallumcheen Farm Ltd. - Real Property

Title 1

PID: 011-498-986

Legal Description: District Lot 94 Osoyoos Division Yale District

Title 2

PID: 011-291-761

Legal Description: Lot 2 Section 26 Township 35 Kamloops (formerly Osoyoos) Division Yale District Plan 2011

Title 3

PID: 011-255-188

Legal Description: Lot 3 Section 26 Township 35 Kamloops (formerly Osoyoos)
Division Yale District Plan 2080

Title 4

PID: 011-367-750

Legal Description: Lot 6 District Lot 148 Kamloops Division Yale District Plan 1654

Title 5

PID: 011-367-784

Legal Description: Lot 7 District Lot 148 Kamloops Division Yale District Plan 1654

Title 6

PID: 014-003-449

Legal Description: The Fractional South West $\frac{1}{4}$ Section 35 Township 35 Kamloops
(formerly Osoyoos) Division Yale District except Plan A402

Title 7

PID: 013-795-848

Legal Description: That Part of section 13 which is bounded on the North by District Lot 148 Osoyoos Division Yale District on the East by District Lot 94 Osoyoos Division Yale District, on the South by District Lot 92 Osoyoos Division Yale District and on the West by the right bank of Fortune Creek as shown on Plan of said Township dated at Ottawa on the 10th day of January, 1902 including all the timber thereon Township 18 Range 9 West of the 6th Meridian Kamloops Division Yale District

SCHEDULE "D"

Claims to be deleted/expunged from title to Real Property

Nature of Charge	Registration No.
Mortgage Bank of Nova Scotia	CA8113787
Assignment of Rents Bank of Nova Scotia	CA8113788
Mortgage Bank of Nova Scotia	CA8542605
Assignment of Rents Bank of Nova Scotia	CA8542606
Mortgage Van Maren Financial Ltd.	CB460545
Assignment of Rents Van Maren Financial Ltd.	CB460546
Mortgage Van Maren Financial Ltd.	CB460547
Assignment of Rents Van Maren Financial Ltd.	CB460548
Claim of Builder's Lien Douglas Smith	LB572943
Claim of Builder's Lien Douglas Smith	LB572944

Together with any other charges, liens, encumbrances, caveats, mortgages, certificates of pending litigation, or interests registered against the lands subsequent to the above charges.

SCHEDULE "E"

Permitted Encumbrances, Easements and Restrictive Covenants related to Real Property

1. The reservations, limitations, provisos and conditions expressed in the original grant thereof from the Crown;
2. The following legal notations:
 - (a) THIS TITLE MAY BE AFFECTED BY THE AGRICULTURAL LAND COMMISSION ACT
 - (b) THIS CERTIFICATE OF TITLE MAY BE AFFECTED BY THE AGRICULTURAL LAND COMMISSION ACT, SEE AGRICULTURAL LAND RESERVE PLAN NO.M11122
 - (c) THIS TITLE MAY BE AFFECTED BY A PERMIT UNDER PART 26 OF THE LOCAL GOVERNMENT ACT, SEE KW139409
3. Any residential tenancies;
4. And the following:

Nature of Charge	Registration No.
Undersurface Rights The Director of Soldier Settlement	32820E
Covenant Her Majesty the Queen in Right of the Province of British Columbia	L41694
Covenant Her Majesty the Queen in Right of the Province of British Columbia	L41698
Statutory Right of Way British Columbia Hydro and Power Authority	CA9990276

SCHEDULE C

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

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

SEALING ORDER

BEFORE THE HONOURABLE MADAM
JUSTICE FITZPATRICK

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)

WEDNESDAY THE 31ST DAY OF
JULY 2024

ON THE APPLICATION of Alvarez & Marsal Canada Inc., in its capacity as Court-appointed Receiver and Manager (the “**Receiver**”) of all of the assets, undertakings and properties of Bifano Consolidated Inc., Bifano Farms Inc., Nata Farms Inc., SSC Ventures (No. 105) Ltd. and Spallumcheen Farm Ltd. (collectively, “**Bifano**”) coming on for hearing at Vancouver, British Columbia, on the 31st day of July 2024; AND UPON HEARING Bryan C. Gibbons and Noor Mann, counsel for the Receiver, and those other counsel listed on **Appendix “A”** hereto, and UPON READING the material filed herein, including the First Report of the Receiver; AND PURSUANT TO THE *British Columbia Supreme Court Civil Rules*, and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS that:

Sealing Order

1. The following documents be sealed by the Registrar of this Honourable Court for the duration noted:

Items to be sealed

Description	Date filed: <i>(Date on Court Stamp)</i>	Number of copies filed, including any extra copies for the judge.	Duration of sealing order: <i>(to specific date or until further order)</i>	Sought	Granted	
					YES	NO
1) Entire File				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2) Specific Documents Confidential Affidavit of Todd Martin made July 25, 2024	To be filed.	1	Until 30 days after the date upon which The Receiver has filed with the Court the certificate in the form attached at Schedule "B" of the Approval and Vesting Order made in this Proceeding on July 31, 2024	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3) Clerk's Notes				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4) Order				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4) Reasons for Judgment				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2. Access to the sealed items is restricted to the following persons:

- a. ☐ Parties
- b. ☒ Counsel for the Receiver and the Petitioner
- c. ☐ Others [Specify]

3. Endorsement of this Order by counsel appearing on this Application 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:

NOOR MANN
Lawyer for the Monitor, Alvarez & Marsal
Canada Inc.

By the Court

Registrar

APPENDIX “A”**List of Counsel**

Counsel	Party
Bryan C. Gibbons Noor Mann	The Receiver, Alvarez & Marsal Canada Inc.
Lisa Hiebert Mishaal Gill	The Bank of Nova Scotia

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**

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

SEALING ORDER



Barristers & Solicitors
1600 Cathedral Place
925 West Georgia Street
Vancouver, British Columbia
V6C 3L2
Phone: (604) 685-3456
Attention: Bryan C. Gibbons

SCHEDULE D

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**

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

)
)

WEDNESDAY, THE 31ST DAY
OF JULY 2024

ON THE APPLICATION of Alvarez & Marsal Canada Inc., in its capacity as Court-appointed Receiver and Manager (the “**Receiver**”) of all of the assets, undertakings and properties of Bifano Consolidated Inc., Bifano Farms Inc., Nata Farms Inc., SSC Ventures (No. 105) Ltd. and Spallumcheen Farm Ltd. (collectively, “**Bifano**”) coming on for hearing at Vancouver, British Columbia, on the 31st day of July 2024; AND ON HEARING Bryan C. Gibbons and Noor Mann, counsel for the Receiver, and those other counsel listed on **Appendix “A”** hereto, and no one else appearing, although duly served; AND UPON READING the material filed, including the First Report of the Receiver dated July 26, 2024 (the “First Report”)

THIS COURT ORDERS AND DECLARES THAT:

Service and Definitions

1. The time for service of this Notice of Application and supporting materials is hereby abridged so that the application is properly returnable on July 31, 2024, and the need for further service of the Notice of Application and supporting materials is hereby dispensed with.

Increase to Receiver's Borrowings Charge

2. The order of this Court made June 24, 2024 is hereby amended so that paragraph 31 now reads as follows:

The Receiver is authorized and empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$1,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as the Receiver deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge, the Charges (as defined in the ARIO), the charges as set out in Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA and all valid and perfected security interests in favour of CWL for specific equipment leased by Nata Farms Inc. and Bifano Consolidated Inc. which rank in priority to BNS' security interests under the PPSA. For greater clarity, and as noted in paragraph 13, the Charges do not secure amounts incurred after the date of this Order.

3. Endorsement of this Order by counsel appearing on this application other than counsel for the Receiver is dispensed with.

THE FOLLOWING PARTIES CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Bryan C. Gibbons
 Lawyer for the Receiver, Alvarez & Marsal
 Canada Inc.

By the Court

Registrar

APPENDIX “A”**List of Counsel**

Counsel	Party
Bryan C. Gibbons Noor Mann	The Receiver, Alvarez & Marsal Canada Inc.
Lisa Hiebert Mishaal Gill	The Bank of Nova Scotia

SCHEDULE D

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**

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

) WEDNESDAY, THE 31ST DAY
) OF JULY 2024

ON THE APPLICATION of Alvarez & Marsal Canada Inc., in its capacity as Court-appointed Receiver and Manager (the “**Receiver**”) of all of the assets, undertakings and properties of Bifano Consolidated Inc., Bifano Farms Inc., Nata Farms Inc., SSC Ventures (No. 105) Ltd. and Spallumcheen Farm Ltd. (collectively, “**Bifano**”) coming on for hearing at Vancouver, British Columbia, on the 31st day of July 2024; AND ON HEARING Bryan C. Gibbons and Noor Mann, counsel for the Receiver, and those other counsel listed on **Appendix “A”** hereto, and no one else appearing, although duly served; AND UPON READING the material filed, including the First Report of the Receiver dated July 26, 2024 (the “First Report”)

THIS COURT ORDERS AND DECLARES THAT:

Service and Definitions

1. The time for service of this Notice of Application and supporting materials is hereby abridged so that the application is properly returnable on July 31, 2024, and the need for further service of the Notice of Application and supporting materials is hereby dispensed with.

Increase to Receiver's Borrowings Charge

2. The order of this Court made June 24, 2024 is hereby amended so that paragraph 31 now reads as follows:

The Receiver is authorized and empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$1,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as the Receiver deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge, the Charges (as defined in the ARIO), the charges as set out in Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA and all valid and perfected security interests in favour of CWL for specific equipment leased by Nata Farms Inc. and Bifano Consolidated Inc. which rank in priority to BNS' security interests under the PPSA. For greater clarity, and as noted in paragraph 13, the Charges do not secure amounts incurred after the date of this Order.

3. Endorsement of this Order by counsel appearing on this application other than counsel for the Receiver is dispensed with.

THE FOLLOWING PARTIES CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Bryan C. Gibbons
 Lawyer for the Receiver, Alvarez & Marsal
 Canada Inc.

By the Court

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Counsel	Party
Bryan C. Gibbons Noor Mann	The Receiver, Alvarez & Marsal Canada Inc.
Lisa Hiebert Mishaal Gill	The Bank of Nova Scotia

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IN THE SUPREME COURT OF BRITISH COLUMBIA
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BETWEEN:

THE BANK OF NOVA SCOTIA

PETITIONER

AND:

BIFANO CONSOLIDATED INC.,
AND OTHERS

RESPONDENTS

NOTICE OF APPLICATION



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Email: bgibbons@lawsonlundell.com

Attention: Bryan C. Gibbons