



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

**THIRD REPORT OF THE MONITOR
ALVAREZ & MARSAL CANADA INC.**

June 19, 2024

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1.0 INTRODUCTION

- 1.1 On February 28, 2024 (the “**Filing Date**”), the Bank of Nova Scotia (the “**Petitioner**”) sought and obtained an initial order (the “**Initial Order**”), by the Supreme Court of British Columbia (the “**Court**”) to commence proceedings (the “**CCAA Proceedings**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the “**CCAA**”) in respect of Bifano Consolidated Inc. (“**Bifano Consolidated**”), Bifano Farms Inc. (“**Bifano Farms**”), Spallumcheen Farm Ltd. (“**Spallumcheen**”), Nata Farms Inc. (“**Nata**”) and SSC Ventures (No. 105) Ltd. (“**SSC**”) and together with Nata, Spallumcheen, Bifano Farms and Bifano Consolidated, “**Bifano**” or the “**Company**”), a group of privately held companies that operate a dairy farm and a trucking business (since discontinued) in Armstrong, British Columbia.
- 1.2 The Initial Order provided for, among other things, an initial stay of proceedings against Bifano and its assets and property until and including March 11, 2024 (the “**Stay Period**”) and the appointment of Alvarez & Marsal Canada Inc. (“**A&M**”) as monitor of Bifano (the “**Monitor**”) during the CCAA Proceedings, with enhanced powers in respect of the business and assets.
- 1.3 On March 11, 2024, the Court granted an amended and restated initial order (the “**ARIO**”) which amended and restated the Initial Order to:
- a) increase the amount authorized to be borrowed (the “**Interim Facility**”) by Bifano under the Interim Credit Agreement (as defined in the Initial Order) to \$1.5 million;
 - b) confirm the priority of Court ordered charges made in the CCAA Proceedings; and
 - c) extend the Stay Period from March 11, 2024 to May 24, 2024.
- 1.4 In addition to the approval of the ARIO, the Court granted an Order (the “**SISP Order**”), which approved the sales and investment solicitation procedures for a process (the “**Sales Process**”) in respect of Bifano’s business and assets.
- 1.5 On May 21, 2024, the Court granted an order to extend the Stay Period from May 24, 2024 to July 12, 2024.
- 1.6 On June 24, 2024, the Petitioner will be making an application (the “**Receivership Application**”), seeking the following:
- a) a declaration from this Court that Bifano and its former employees meet the criteria in the *Wage Earner Protection Program Regulations*, SOR/2008-222 and that for those former employees, the *Wage Earner Protection Program Act (Canada)*, SC 2005, c 47, s 1 (“**WEPPA**”) applies (the “**WEPPA Declaration**”);
 - b) discharge of A&M as Monitor in these CCAA Proceedings;

- c) appointment of A&M as Receiver of all the assets, undertakings and property, including real property, of Bifano; and
- d) authorizing A&M, as Receiver to sell milk quota the beneficial owner of which is Bifano Farms (as described below) as well as Bifano's inventory of livestock/cows.

1.7 Further information regarding the CCAA Proceedings, including the First Report of the Monitor dated March 7, 2024 (the "**First Report**"), the Second Report of the Monitor dated May 16, 2024 (the "**Second Report**"), this third report (the "**Third Report**"), the ARIO, various affidavits, and all other Court filed documents, communications and notices as of even date, are available on the Monitor's website at www.alvarezandmarsal.com/BifanoNata (the "**Monitor's Website**").

2.0 PURPOSE OF THIS REPORT

2.1 The Monitor has prepared this Third Report to provide information and commentary to this Honourable Court and Bifano's stakeholders with respect to the following:

- a) an update on the business operations and restructuring efforts since the date of the Second Report;
- b) the activities of the Monitor since the date of the Second Report;
- c) a comparison of actual cash receipts and disbursements of Bifano as compared to the cash flow forecast set out in the Second Report (the "**Third CCAA Cash Flow Forecast**") for the period from May 6, 2024, to June 9, 2024;
- d) an update on the Sales Process;
- e) the Receivership Application including the sale of Bifano Farms milk quota and the Company's livestock inventory; and
- f) the WEPPA Declaration.

2.2 This Third Report should be read in conjunction with the Receivership Application, the Petition filed by the Petitioner on February 20, 2024, the pre-filing report of the Proposed Monitor dated February 16, 2024, the First Report and the Second Report (collectively, the "**Filed Materials**"). Capitalized terms used but otherwise not defined herein have the meaning given in the Filed Materials.

3.0 TERMS OF REFERENCE

3.1 In preparing this Third Report, the Monitor has necessarily relied upon unaudited financial and other information supplied, and representations made to it, by the principal shareholder and the management of Bifano ("**Management**"). Although this information has been subject to its

review, the Monitor has not conducted an audit nor otherwise attempted to verify the accuracy or completeness of any of the information prepared by Management. Accordingly, the Monitor expresses no opinion and does not provide any other form of assurance on the accuracy and/or completeness of any information contained herein, or otherwise used to prepare this Third Report.

3.2 Certain of the information referred to in this Third Report consists of financial forecasts and/or projections (and certain operating assumptions underlying same) as well as financial information provided by Management. An examination or review of financial forecasts and projections and procedures as outlined by the Chartered Professional Accountants of Canada has not been performed. Readers are cautioned that since financial forecasts and/or projections are based upon assumptions about future events and conditions that are not ascertainable, actual results will vary from those forecasts and/or projections and any variations could be material.

3.3 Unless otherwise stated, all monetary amounts contained in this Third Report are expressed in Canadian dollars.

4.0 UPDATE ON BUSINESS OPERATIONS AND RESTRUCTURING EFFORTS

4.1 The Monitor continues to actively monitor the operations at the Bifano farm site in Armstrong, B.C. and oversee the use of funding provided by the Interim Lender. Since the end of March 2024, Bifano's operations have consisted primary of its core dairy and milk sales, seeding and fertilizing adjacent lands, and select contract farming activities.

Release of Leased Equipment

4.2 Since the Second Report, the Monitor has continued to assist Management with the return of redundant equipment leased by the Company to the respective lessors with valid and enforceable security interests.

4.3 The Company and the Monitor have continued to engage with various equipment lessors as required to retain leased equipment required for the business during the pendency of the CCAA Proceedings.

Ongoing Review of Business Operations

4.4 The Monitor continues to assist the Company with respect to their business operations, including:

- a) a review of the 2024 custom/contract farming operations;
- b) monthly review of the milk statement issued by the BC Milk Marketing Board ("BCMMB");
and
- c) periodic review of requests of suppliers, lessors and other information.

Restructuring Efforts – Sales Process

- 4.5 As noted in the Second Report, the Monitor was still in the process of reviewing offers received for the purchase of the assets and business of Bifano in accordance with the Sales Process when an extension of the Stay Period was sought on May 21, 2024. Section 7 of this report sets out further information regarding the Sales Process and the sale and investment solicitation procedures (“SISP”), the bids received and comments on the result of the Sales Process.

5.0 ACTIVITIES OF THE MONITOR

- 5.1 The activities of the Monitor since the date of the Second Report include the following:

Monitoring of Cash Receipts and Disbursements

- a) reviewing the daily cash receipts and disbursements of Bifano, reconciled to the bank statements;
- b) preparing weekly variance reporting of actual receipts and disbursements;
- c) reviewing Bifano’s planned disbursements;
- d) on-going dialogue and consultation with the Petitioner (in its capacity as the Interim Lender) in respect of cash management matters;

Sales Process

- e) reviewing the bids received and corresponding with bidders to clarify bid particulars;
- f) preparing an illustrative liquidation analysis as a comparison to any bids received;
- g) discussions and meetings with representatives of the Interim Lender and legal counsel to the Monitor to provide updates on the Sales Process and discuss particulars of bids received;
- h) review BCMMB regulations respecting the sale and transfer of milk quota and discussions with BCMMB representatives regarding same;

Preparation of Various CCAA Cash Flow Forecasts

- i) in consultation with Management, the Monitor has been updating various versions of the 13-week cash flow forecast to be in compliance with the draws under the Interim Lending Facility;

Statutory Duties of the Monitor and Statutory Creditors

- j) updating the Monitor’s website as required;
- k) responding to various enquiries from various governmental agencies including the Canada Revenue Agency in respect of Bifano’s GST account and other related matters; and
- l) drafting this Third Report.

6.0 CASH FLOW VARIANCE ANALYSIS

- 6.1 Bifano's actual cash receipts and disbursements compared to the Third CCAA Cash Flow Forecast during the period from May 6, 2024, to June 9, 2024 (the "Reporting Period") are summarized in the table below:

Bifano Consolidated Inc. et al. Cash Flow Forecast Variance For the Five Week Period from May 6, 2024 to June 9, 2024 <i>\$CAD 000'</i>				
	Actual	Forecast	Variance	
Cash operating receipts				
Dairy - BCMMB	\$ 517	\$ 517	\$ -	
Custom/ contract farming	220	190	30	
Trucking receipts	63	63	-	
	800	770	30	
Cash operating disbursements				
Payroll costs	249	227	21	
Fuel	74	90	(16)	
Feed	238	215	23	
Sawdust	35	41	(7)	
Repairs and maintenance	35	32	3	
Other (vet, supplies, quota rental)	158	166	(8)	
Leases	107	164	(58)	
Utilities	9	15	(7)	
Insurance	38	42	(4)	
Contingency	-	30	(30)	
	941	1,023	(82)	
Net operating cash flow	(142)	(253)	112	
Other cash disbursements				
Professional fees	174	174	-	
Interim Lending Facility - commitment fee	-	20	(20)	
Interim Lending Facility - interest	-	2	(2)	
	174	196	(22)	
Net cash flow (deficit)	\$ (316)	\$ (449)	\$ 133	
Cash continuity				
Opening cash balance	406	406	-	
Interim Lending Facility draw	250	275	(25)	
Net cash flow (deficit)	(316)	(449)	133	
Ending cash balance	\$ 340	\$ 232	\$ 108	
Interim Lending Facility				
Opening balance	200	200	-	
Draws (repayments)	250	275	(25)	
Ending Interim Lending Facility balance	\$ 450	\$ 475	\$ (25)	

- 6.2 During the Reporting Period, Bifano experienced a net favourable cash flow variance of approximately \$133,000. The principal components of the variance are described below:

Receipts

- a) trucking receipts of \$63,000 represents the final sale of fuel related to the trucking business wind-down. No other trucking receipts are expected;

Disbursements

- b) feed was approximately \$23,000 higher than forecast due to adverse weather conditions which delayed the Company's first crop harvest and resulted in the Company purchasing alfalfa for its silage and extra fertilizer to increase crop yields;
- c) payroll was approximately \$21,000 higher than forecast due to the commencement of the custom/contract farming operations. Source deductions continue to be remitted to the Canada Revenue Agency in the normal course;
- d) lease payments were approximately \$58,000 lower than forecast due to a temporary timing difference as a result of Management's negotiations with an equipment lessor; and
- e) Advances under the Interim Facility were approximately \$25,000 lower than forecast due to the favourable net cash flow over the period.

7.0 SALES AND INVESTMENT SOLICITATION PROCEDURES

- 7.1 Refer to the table below for a summary of the results of the Sales Process and solicitation efforts:

Bifano Consolidated Inc. et al. Sales Process Summary			
Location of Parties	Parties Contacted	NDA Signed	Bid Received
BC	32	10	3
ON	2	-	-
AB	9	-	-
Others	-	-	-
Total	43	10	3

- 7.2 As noted in the Second Report, the Monitor amended the bid deadline to May 10, 2024 (the "**Bid Deadline**"). As of the Bid Deadline, the Monitor had received three (3) bids, all of which were received prior to May 10, 2024 and accompanied by a cash deposit of 10% of bid amounts. The bids are summarized in detail and discussed in the Confidential Supplement to the Monitor's Third Report dated June 19, 2024 ("**Confidential Supplemental Report**") which is subject to an application being brought by the Monitor's legal counsel to have the Confidential Supplemental Report sealed to ensure sensitive and competitive bid information is not compromised.

- 7.3 Since the Bid Deadline, the Monitor has held discussions with each party that submitted a bid to clarify particulars of their bid and to request any additional information that was required to evaluate their bid.
- 7.4 After the bids were clarified, the Monitor held meetings with the Petitioner to review the bids, to seek feedback from the Petitioner and to identify, if possible, any bid that may be deemed a “Successful Bid” (as defined in the SISP).
- 7.5 On May 24, 2024, the Petitioner formally advised the Monitor that it did not support advancing any bid received as a “Successful Bid”.
- 7.6 The Monitor has notified all bidders that their bid was not accepted as a “Successful Bid” and as at the date of this Third Report, the Monitor has returned all of the bid deposits received from the three interested parties that submitted bids.
- 7.7 Subsequent to the refund of bid deposits, one of the parties who made a bid pursuant to the SISP proposed revised terms for a potential transaction. The Petitioner has confirmed that the terms of the revised offer are not acceptable to the Petitioner, and, in the circumstances, the Petitioner is not supportive of extending the CCAA to pursue or further negotiate the proposed revised terms.

8.0 WEPPA DECLARATION

- 8.1 As part of the restructuring efforts of Bifano, the Company’s trucking operations were shuttered in or around mid-late March 2024. As a result, the Company terminated 46 employees on March 15, 2024, and one (1) additional employee on April 9, 2024, all of whom were Nata employees.
- 8.2 Pursuant to Section 5(1) of WEPPA, an individual is eligible to receive a payment if the following conditions are met:
- i. the employment of an individual was ended for a reason prescribed by regulation;
 - ii. the former employer is the subject of a CCAA proceeding;
 - iii. the individual is owed eligible wages by the former employer; and
 - iv. a court makes a determination that pursuant to subsection 5(5) of WEPPA that the former employer meets the criteria prescribed by regulation.
- 8.3 Section 5(5) of WEPPA states that, on application by any person, a court pursuant to the CCAA may determine that a former employee meets criteria prescribed by regulation. Section 3.2 of the Regulations to WEPPA states:

“For the purposes of subsection 5(5) of the Act, a court may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations”.

- 8.4 The Monitor confirms that: (1) the employment of the individuals was terminated (a reason prescribed by regulation); (2) the former employer, Nata, is a Respondent in these CCAA Proceedings; and (3) the individuals are owed eligible wages by the former employer, Nata.

9.0 RECEIVERSHIP APPLICATION

- 9.1 As detailed in the Pre-Filing Report of the Proposed Monitor dated February 16, 2024, and the First Report, the Interim Facility was established to, among other things, fund the Sales Process in order to effect a sale or other restructuring transaction on a going concern basis while sustaining Bifano’s core dairy operations.
- 9.2 As discussed in Section 7 of this report, the Sales Process did not result in the selection of a “Successful Bid”. Accordingly, the Petitioner has informed the Monitor that given its concerns regarding Bifano’s operating costs and other expenses (including professional fees), continuing to finance Bifano within the context of the CCAA cannot be justified.
- 9.3 The Monitor, after reviewing the results of the Sale Process and discussing alternatives with the Petitioner, is of the view that the prospect of a viable financial restructuring of Bifano’s financial position and/or a sales transaction with terms satisfactory to the Petitioner (as Interim Lender and fulcrum secured creditor) is remote and that an orderly and expeditious liquidation of the Company’s assets is an appropriate course of action in the circumstances. Accordingly, there appears to be little benefit in continued relief under the ARIO where Bifano appears to have limited access to short term liquidity and that it may be prudent to shutter the Company’s operations and effect a liquidation pursuant to a receivership order.
- 9.4 The Petitioner has confirmed that it will seek an order to have A&M discharged as Monitor and to seek the immediate appointment of A&M as receiver, with the application commenced in the existing CCAA Proceedings. Terminating operations addresses any prior concerns regarding a receiver taking possession of certain assets and mitigates risks surrounding animal welfare concerns where the dairy operator is insolvent.
- 9.5 As noted previously, on June 24, 2024, the Petitioner will be applying for an order (“**Receivership Order**”) to, among other things, discharge the Monitor and to appoint A&M as Receiver of all the assets, undertakings and property, including real property, of Bifano.

- 9.6 If this Honourable Court grants a Receivership Order, and A&M is appointed as Receiver, it intends to immediately commence liquidation of the assets of the Company in particular, monetization of the milk quota owned by Bifano Farms. Contemporaneously with any realization of Bifano Farms' milk quota, if appointed as Receiver, A&M intends to start the process of liquidating Bifano's livestock inventory using the services of a third-party custom auction house. This third-party will also assist the proposed Receiver with the transition and transport of the dairy cows to auction, assist or facilitate third party managed quota holders with options to allow their quota to continue to be used or returned to the third-party quota holder who can deal with it on their own terms, and other quota management issues.
- 9.7 If appointed, the proposed Receiver intends to monetize Bifano Farms' milk quota by listing the transferable milk quota as determined by BCMMB (in total or in tranches over a period of time) on the monthly Quota Exchange administered by BCMMB in accordance with the BCMMB Consolidated Order of June 1, 2020 (as amended) ("**Consolidated Order**"). Based on our review and understanding of the Consolidated Order and the options for a sale of milk quota, a transfer and sale of milk quota in a realization scenario can only be effected by placing the milk quota on the BCMMB Quota Exchange which is an open exchange of buyers and sellers of milk quota in B.C. governed in accordance with BCMMB's guidance and regulations.
- 9.8 When all of the milk quota held by Bifano Farms is placed on the Quota Exchange, milk production relating to the respective quota must be discontinued which necessitates the sale of dairy cows and other livestock in an expeditious manner and is normally or frequently conducted by transporting the cows to a third party stockyard, abattoir and/or custom livestock auction house for sale at a virtual or live auction. The intention of the proposed Receiver would be to engage with a qualified and experienced third-party to facilitate the transport and auction of the Bifano livestock holdings once Bifano Farms' milk quota is listed on the Quota Exchange for sale/transfer. Accordingly, the proposed form of Receivership Order will include discretion for the proposed Receiver to sell milk quota in such amounts and at such time as the Receiver determines appropriate in order to maximize realizations from the sale of Bifano Farms' milk quota.
- 9.9 Prior to the granting of a Receivership Order by this Honourable Court, the Petitioner (as Interim Lender) has confirmed that it will make the necessary funding available to Bifano to pay all outstanding expenses for goods and services provided to Bifano during the pendency of the CCAA Proceedings. Given the fluid nature of Bifano's business, it is possible that certain costs and expenses (including professional fees) may not be fully discharged at the date of any

Receivership Order and as such, a provision will be sought by the Petitioner that the proposed Receivership Order allows the Receiver to discharge these operating expenses and other costs after the effective termination of the CCAA Proceedings.

10.0 MONITOR'S RECOMMENDATION

- 10.1 The Monitor respectfully recommends and supports the Court's endorsement of the WEPPA Declaration and the Receivership Application.

All of which is respectfully submitted to this Honourable Court this 19th day of June, 2024.

Alvarez & Marsal Canada Inc.,
in its capacity as Monitor of
Bifano Consolidated Inc., Bifano Farms Inc.,
Spallumcheen Farm Ltd., Nata Farms Inc.,
and SSC Ventures (No. 105)
and not in its personal capacity



Per: Todd M. Martin
Senior Vice President