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Credit bidding is firmly established in the US and on the rise in Canada.[1] Several factors have contributed to its development. First, it has become increasingly common for *CCAA* proceedings (and Chapter 11 proceedings) to involve (indeed to basically conclude by way of) a sale of all or substantially all of the debtor's assets. Second, these large-scale asset sales are increasingly being conducted by way of a competitive *CCAA* auction process at which one or more bids compete for the assets. Third, these *CCAA* auctions are increasingly being attended by sophisticated loan-to-own investors (acting individually or as a syndicate of lenders) who generally seek to acquire a distressed company and/or its assets by way of either (a) exchanging their debt into equity of the reorganized company in a plan scenario or (b) credit bidding that debt in the event that the restructuring proceeds by way of a sale process. As each of these factors becomes increasingly common and commonplace in Canada, so too does credit bidding.

While there is a considerable body of case law on credit bidding in the US, there is relatively little in Canada. This is because there have been relatively few cases in Canada to date in which secured creditors have sought to use a credit bid to acquire the assets of a debtor in the context of a competitive and/or contested auction process. As a result, there has been little need or reason to date for Canadian courts to consider the validity or value of a credit bid as compared to another more traditional form of non-credit bid. This was, however, precisely the case in the recent cross-border *CCAA* and Chapter 11 proceedings of White Birch Paper Company. In that case, credit bidding was front and centre in Canada, as the stalking horse bidder, and eventual winning bidder for substantially all of the debtors' assets, acquired those assets in part by way of a significant credit bid launched in the context of a highly competitive and contested *CCAA* auction process. During the course of the proceedings, the purchaser's credit bid was strongly opposed by other creditors and bidders, and as a result, several elements of credit bidding were extensively considered and discussed by the Québec Superior Court (Commercial Division) (*CCAA* Court) and later the Québec Court of Appeal.[2]

Background

White Birch Paper Company is part of a large group of companies (collectively, White Birch) involved in the paper product sector. White Birch owns and operates three pulp and paper mills and a saw mill in Québec, and a fourth pulp and paper mill in the US through its affiliate, Bear Island Paper Company LLC (Bear Island). Overall, approximately 80 per cent of White Birch's assets and businesses are located in Canada, with the other 20 per cent in the US.

On February 24, 2010, all of the White Birch entities filed in Québec under the *CCAA*, and concurrently Bear Island filed Chapter 11 in Virginia under the US *Bankruptcy Code* (collectively, the Debtors). Ernst &Young Inc. was appointed as monitor of the *CCAA* Debtors (the Monitor). As of the filing date, White Birch owed $428 million in principal and $9.77 million in interest under a First Lien Term Loan (the First Lien Debt), which was secured by the Debtors' fixed assets, and approximately $100 million in principal and $4 million in interest under a Second Lien Term Loan (the Second Lien Debt), among other debt obligations. Shortly after the filing, a $140 million DIP facility, secured by all assets of the Debtors, was approved and provided by a group of lenders drawn from the First Lien Debt syndicate (the DIP).

Process to Auction

As is becoming increasingly common, the DIP contained a series of milestones which called for a parallel process of negotiating a plan of arrangement while concurrently initiating a sale process for all or substantially all of the Debtors' assets in the event that a settlement with creditors pursuant to a plan was not feasible. Eventually, the sale process became the preferred alternative and efforts towards developing a plan of arrangement were discontinued.

The sale process, which contemplated a going concern sale of both the Debtors' fixed assets (which were collateral for the First Lien Debt) and the Debtors' current assets (which were not), was initiated in mid-April 2010 with the preparation and approval of a "Sale and Investor Solicitation Process" (SISP). The SISP outlined the solicitation process, the conduct of a subsequent auction in the event of competing bids, and the process and requirement for court approval by the *CCAA* Court and the US Bankruptcy Court.

The sale process under the SISP was managed by Lazard Freres & Co. and, in the end, White Birch received only one formal offer which satisfied all of the SISP requirements. This offer was presented by BD White Birch Investments LLC (BDWBI), an asset acquisition vehicle formed by Black Diamond Capital Management LLC, Credit Suisse Loan Funding LLC, Caspian Advisors LLC, and their respective affiliates (collectively, BDWBI), which held 65.5 per cent of the First Lien Debt and hence constituted "Majority Lenders" under the terms of the First Lien Credit Agreement. Pursuant to the SISP, BDWBI was selected as the "stalking horse" purchaser and negotiated and entered into an asset sale agreement (ASA) with the Debtors. The ASA covered substantially all of the assets of the Debtors, including the Debtors' fixed assets (encumbered by the DIP, the First Lien Debt and the Second Lien Debt) and

their current assets (accounts receivable and inventory, which were only encumbered by the DIP). Under the ASA, the cash consideration would pay out the DIP in full. On September 10, 2010, the *CCAA* Court and the US Bankruptcy Court approved the selection of BDWBI as the proposed stalking horse bidder, the terms of the ASA (subject to certain modifications) and the proposed Bidding Procedures. The Bidding Procedures and related Orders of the Courts specifically contemplated and permitted credit bidding of amounts due under the DIP or the First Lien Credit Agreement.

On the last date for submitting a Qualified Bid pursuant to the Bidding Procedures, the Debtors received a qualifying offer from the newly formed Sixth Avenue Investment Co., LLC (Sixth Avenue), which was funded by a group of other lenders holding approximately 10 per cent of the First Lien Debt (collectively, the Minority Lenders). Pursuant to the Bidding Procedures, Sixth Avenue's bid was recognized by the Debtors and the Monitor as a Qualified Bid and an auction was scheduled.

Auction

The auction was held on September 21, 2010, at the offices of Kirkland & Ellis LLP in New York. At the end of the auction, BDWBI's final bid was declared to be the Winning Bid and Sixth Avenue's last bid was declared to be the Alternative Bid. The total consideration offered for the Debtors' assets under BDWBI's Winning Bid came to approximately $236.1 million, which was structured as follows:

- a cash amount of $94.5 million, $90 million of which was allocated to the Debtors' unencumbered current assets and $4.5 million of which was allocated to repay the debt related to certain legal hypothecs affecting certain immovable properties in Québec (which were fixed assets);
- a credit bid of $78 million (of First Lien Debt) allocated to the Debtors' Canadian fixed assets (which were collateral for that debt), which was effectuated by way of the BDWBI group, as Majority Lenders, directing the Agent for the First Lien Debt to make that credit bid on behalf of all the holders of First Lien Debt;
- $36.7 million of assumed liabilities; and
- up to $26.9 million in cure costs.

In the aggregate, under BDWBI's Winning Bid, $126.7 million was allocated to the Debtors' current assets, and $82.5 million was allocated to the Debtors' Canadian fixed assets. Sixth Avenue's final bid, on the other hand, came to approximately $235.6 million (after deducting the $3 million expense reimbursement), resulting in a bid that was $500,000 lower than that of BDWBI. Sixth Avenue's bid included $175 million in cash, $36.7 million in assumed liabilities and up to $26.9 million in cure costs. Under Sixth Avenue's bid, $173.4 million was allocated to the Debtors' current assets and $35.3 million was allocated to the Debtors' fixed assets.

Based on the value attributed to the assets through a combination of cash, assumption of liabilities and credit bids, the Debtors and the Monitor determined that the final offer from BDWBI, which was $500,000 higher than Sixth Avenue's (in accordance with the minimum bid increments under the Bidding Procedures), constituted the highest overall value for the Debtors' assets and the highest recoveries for the Debtors' creditors, in the aggregate and according to their priorities, and the Debtors sought court approval of the sale of their assets to BDWBI pursuant to BDWBI's final bid, with the Monitor's support.

Objections from the Minority Lenders

At the auction, and at the sale approval hearing, the Minority Lenders raised a number of objections to BDWBI's bid and to any selection of it as the Winning Bid by the Debtors, the Monitor or the Court. The objections made and the responses provided are summarized below.[3]

a. The Agent did not have the right to credit bid because the Minority Lenders had not consented to a credit bid on their behalf — Majority Rules and Drag-Along in Credit Bidding

One of the Minority Lenders' first objections was that Credit Suisse, as the Agent for the First Lien lenders, lacked the authority to make the credit bid that was part of BDWBI's bid because it had not received the consent of the Minority Lenders to make that credit bid on behalf of all the lenders.

BDWBI opposed this argument on the basis that, among other things, under the terms of the First Lien Credit Agreement (i) each lender had irrevocably designated the Agents as the agent for all of the lenders; (ii) each lender had irrevocably authorized the Agents to take such action on its behalf as was permitted under the terms of the First Lien Credit Agreement and the related security documents; and (iii) upon an event of default (as had arisen by virtue of the commencement of the bankruptcy proceedings), the terms of the First Lien Credit Agreement provided that the Agents were authorized and directed to take such actions as shall be reasonably directed by the Majority Lenders. Finally, BDWBI noted that the First Lien Credit Agreement specifically delineated which actions required unanimity of the lenders (such as, for example, to amend the principal amount of the debt), and exercising a right to credit bid was not one of those items.

Accordingly, BDWBI argued that the Majority Lenders were authorized to direct the Agents to credit bid, as they had, that the Agents were in turn authorized to credit bid, and that, by the terms of the First Lien Credit Agreement (to which

each lender was a party), all minority lenders were bound to that instruction from the Majority Lenders and would be dragged along with the results of that instruction.

In addition, BDWBI noted that credit bidding was specifically listed as one of the available remedies under the terms of the US security agreements for the First Lien Debt and that, while the Canadian security agreements did not specifically reference the right or ability to credit bid, they stated that the secured parties were authorized – through the Agents upon an event of default – to "exercise any rights, powers or remedies available to Secured Party at law or in equity or under the [PPSA] or other applicable legislation." BDWBI also noted, of course, that credit bidding had already been recognized as an available right under the SISP and the Bidding Procedures and the related Orders of the Courts approving same.

After considering these issues at the sale hearing, Justice Mongeon found in his Reasons that followed that:

> [17] BDWB is comprised of a group of lenders under the First Lien Credit Agreement and hold, in aggregate approximately 65% of the First Lien Debt. They are also "Majority Lenders" under the First Lien Credit Agreement and, as such, are entitled to make certain decisions with respect to the First Lien Debt including the right to use the security under the First Lien Credit Agreement as [a] tool for credit bidding.
>
> [18] Sixth Avenue is comprised of a group of First Lien Lenders holding a minority position in the First Lien Debt (approximately 10%). They are not "Majority Lenders" and accordingly, they do not benefit from the same advantages as the BDWB group of First Lien Lenders, with respect to the use of the security on the fixed assets of the WB Group, in a credit bidding process.
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> ...
>
> [20] In its Intervention, BDWB has analysed all of the rather complex mechanics allowing it to use the system of credit bidding as well as developing reasons why Sixth Avenue could not benefit from the same privilege. In addition to certain arguments developed in the reasons which follow, I also accept as my own BDWB's submissions developed in section (e), paragraphs [40] to [53] of its Intervention as well as the arguments brought forward in paragraphs [54] to [60] validating BDWB's specific right to credit bid in the present circumstances.
>
> [21] Essentially, BDWB establishes its right to credit bid by referring not only to the September 10 Court Order but also by referring to the debt and security documents themselves, namely the First Lien Credit Agreement, the US First Lien Credit Agreement and under the Canadian Security Agreements whereby the "Majority Lender" may direct the "Agents" to support such credit bid in favour of such "Majority Lenders". Conversely, this position is not available to the "Minority Lenders" (Reasons For Judgment Given Orally On September 24, 2010 (Reasons)).

In doing so, Justice Mongeon affirmed that, based on the terms of the First Lien Credit Agreement, the Majority Lenders were authorized to direct the Agents to credit bid and the Minority Lenders were bound to, and would be dragged along with, that instruction.

It is important for practitioners to note that certain elements of this decision were based directly on, and established by, the particular provisions and language of the First Lien Credit Agreement and the related security documents, as referenced above, which highlights the need for a careful review of, and for proper and effective drafting of, the terms of such documents. Justice Mongeon's findings in this regard are consistent with US law in this area. For example, in *In re GWLS Holdings, Inc.*, No. 08-12430, 2009 WL 453110 (Bankr. D. Del. Feb. 23, 2009), Judge Walsh of the Delaware Bankruptcy Court found in the context of a section 363 sale of the debtor's assets that: (i) a majority of lenders could direct the agent to credit bid for all first lien lenders, even absent unanimous consent; (ii) that the minority lenders were bound by that result; (iii) that the agent was able to credit bid the dissenting lender's claim as part of the majority-directed credit bid; and (iv) that the language in the applicable collateral agreement that empowered the agent to "dispose of or deliver the Collateral or any part thereof" was sufficient to allow the agent to credit bid. (For a further discussion of the US law on credit bidding, see BDWBI Intervention at paras. 37-39 and 77-79.) On its later motion for leave to appeal Justice Mongeon's findings in this regard to the Québec Court of Appeal (which was denied), the Minority Lenders further argued that the BDWBI had breached its fiduciary duties when it chose to credit bid on only the Canadian fixed assets, and not on the US fixed assets (which were also collateral). In doing so, the Minority Lenders claimed that BDWBI had preferred its own interests to those of the First Lien lenders generally and had thereby breached its fiduciary duties to them. In responding to this allegation, Justice Dalphond of the Québec Court of Appeal concluded that this allegation was an inter-creditor matter that would need to be decided by the forum designated under the lenders' credit agreement, and that it was not an issue to be dealt with under the *CCAA* or by a *CCAA* court.(Reasons For Judgment

Pronounced Orally on October 25, 2010, dated November 1, 2010 ("Reasons of the Court of Appeal"), *White Birch Paper Holding Co., Re,* [2010] 72 C.B.R. (5th) 74 (Qc. C.A.) at paras. 13-20.)

This finding was also consistent with similar decisions from US courts in this area. See, for example, *In re Metaldyne Corp.*, 409 B.R. 671, 679-680 (Bankr. S.D.N.Y.) (finding that disputes over consideration to be received by minority lenders following majority-rule action "raise issues concerning an intercreditor dispute or a dispute between [minority lender] and the Agent, neither of which is properly before this Court at this time, if they ever could properly be brought before this Court.").

b. The Agent lacked authority to credit bid under Québec law

The Minority Lenders' next objection was that there was no right to credit bid under Québec law because (i) there is no equivalent to section 363(k) of the US *Bankruptcy Code*[4] in the statutes of Québec or the federal statutes of Canada and that (ii) under the laws of Québec (which governed the security over the fixed assets in Québec), a secured creditor's only options were to sue on the covenant, sell the collateral or take all of the collateral in payment of all of the secured debt – none of which was happening in the White Birch case. In response, BDWBI noted certain existing (albeit limited) *CCAA* precedents as a matter of overriding federal *CCAA* law and that the concept of credit bidding had been accepted under Québec law generally, drawing a comparison to a hypothecary creditor in Québec who purchases hypothecated property and is permitted to retain the purchase price to the extent of its secured claim on the property. BDWBI argued that this concept is regularly applied in judicial sales in Québec and is "the functional equivalent of credit bidding." Moreover, BDWBI cited the provisions of the credit and security documents referenced above and the provisions of the SISP and the Bidding Procedures Orders that had previously recognized the right to credit bid.

In his Reasons, Justice Mongeon acknowledged the existing *CCAA* precedent[5] and found that the concept of credit bidding was not foreign to Québec law and procedure, citing several cases and provisions of the Québec *Code of Civil Procedure* in support of that conclusion. Looking to the words of the Orders that had approved credit bidding at the auction (which said that the lenders under the First Lien Credit Agreement and the DIP would be entitled to credit bid up to the full amount of any allowed secured claims "to the extent permitted under Section 363(k) of the Bankruptcy Code *and other applicable law*"), Justice Mongeon found that: "The words 'and other applicable law' could, in my view, tolerate the inclusion of similar rules and procedures in the province of Québec" (Reasons, at para. 31). Accordingly, Justice Mongeon found that "those bidders able to benefit from a credit bidding situation could very well revert to the use of this lever or tool to arrive at a better bid" and that there was nothing in federal *CCAA* law or Québec provincial law that prevented them from doing so, given the terms of their credit and security documents, as discussed above (Reasons, at paras. 32-33).

c. The value of a credit bid should be limited to the market value of the collateral

The Minority Lenders also argued that, in any event, a dollar of credit bidding should not be considered to be the equivalent of a dollar of cash. Therefore, according to the Minority Lenders, the BDWBI credit bid was not greater than the Sixth Avenue bid and could not be approved as such. Instead, the Minority Lenders argued that a credit bid should be limited to the "market value" of the collateral, and thus BDWBI should not have been permitted to credit bid up to the full face value of the secured debt, but rather only up to the value of the collateral that secured that debt – in which case the BDWBI bid would not have been the winning bid.

In response, BDWBI argued that it was axiomatic that a dollar of credit bid was equal to one dollar of cash, as a credit bid is in essence nothing more than enforcement upon the collateral in respect of which the secured creditor has already paid its $1 – which has already been advanced to the company. Justice Mongeon agreed and affirmed that a dollar of credit bid is equivalent to a dollar of cash bid, and that a credit bid may be made up to the face value amount of the credit instrument upon which the credit bidder is allowed to rely (Reasons, at para. 34). Justice Mongeon's findings on this point are also consistent with prevailing US law. For example, in *Cohen* v. *KB Mezzanine Fund II LP* (*In re SubMicron Sys. Corp.*), the Third Circuit analyzed whether a secured creditor could credit bid the full face value of its secured debt or whether its credit bid was limited only to the economic value of its collateral. In determining this issue, the Third Circuit held that Section 363(k) of the US *Bankruptcy Code* "empowers creditors to bid the total face value of their claims — it does not limit bids to claims' economic value" (*In re SubMicron*, 432 F.3d 448 at 459 (3rd Cir. 2006)).

d. The Importance and Finality of Process in a *CCAA* proceeding

In rendering his Reasons for approving the sale to BDWBI, Justice Mongeon also commented extensively on the importance, sanctity and finality of process matters in a *CCAA* proceeding. These statements are best read in their entirety and, in the authors' view, provide important further support for the sanctity of process doctrine that is central to an efficient and predictable *CCAA* process and result:

> "[37] I have dealt briefly with the process. I don't wish to go through every single step of the process but I

reiterate that this process was put in place without any opposition whatsoever. It is not enough to appear before a Court and say: "Well, we've got nothing to say now. We may have something to say later" and then, use this argument to reopen the entire process once the result is known and the result turns out to be not as satisfactory as it may have been expected. In other words, silence sometimes may be equivalent to acquiescence. All stakeholders knew what to expect before walking into the auction room.

[38] Once the process is put into place, once the various stakeholders accept the rules, and once the accepted rules call for the possibility of credit bidding, I do not think that, at the end of the day, the fact that credit bidding was used as a tool, may be raised as an argument to set aside a valid bidding and auction process.

[39] Today, the process is completed and to allow "Sixth Avenue" to come before the Court and say: "My bid is essentially better than the other bid and Court ratify my bid as the highest and best bid as opposed to the winning bid" is the equivalent to a complete eradication of all proceedings and judgments rendered to this date with respect to the Sale of Assets authorized in this file since May/June 2010 and I am not prepared to accept this as a valid argument. Sixth Avenue should have expected that BDWB would want to revert to credit bidding and should have sought a modification of the bidding procedure in due time.

[40] The parties have agreed to go through the bidding process. Once the bidding process is started, then there is no coming back. Or if there is coming back, it is because the process is vitiated by an illegality or non-compliance of proper procedures and not because a bidder has decided to credit bid in accordance with the bidding procedures previously adopted by the Court.

[41] The Court cannot take position today which would have the effect of annihilating the auction which took place last week. The Court has to take the result of this auction and then apply the necessary test to approve or not to approve that result. But this is not what the contestants before me ask me to do. They are asking me to make them win a bid which they have lost.

[42] It should be remembered that "Sixth Avenue" agreed to continue to bid even after the credit bidding tool was used in the bidding process during the auction. If that process was improper, then "Sixth Avenue" should have withdrawn or should have addressed the Court of directions but nothing of the sort was done. The process was allowed to continue and it appears evident that it is only because of the end result which is not satisfactory that we now have a contestation of the results."

Based on all of the above, Justice Mongeon approved the sale to BDWBI and entered the Approval and Vesting Order dated September 28, 2010 (the Sale Order). As mentioned, the Minority Lenders' application for leave to appeal the Sale Order to the Québec Court of Appeal was denied.

Conclusion/Take-Aways

To the authors' knowledge, the White Birch *CCAA* proceedings came to involve the most significant and extensive discussion and consideration of credit bidding in Canada to date. As such, the case provides several important take-aways concerning the law on credit bidding in Canada, which can be summarized as follows:

- Credit bidding continues to be accepted by Canadian courts.
- The terms of the underlying credit and security documentation are highly relevant to a secured party's right to credit bid, and in particular to a secured party's (or its nominee's or agent's) right to credit bid on behalf of others.
- Secured creditors can credit bid up to the full face value of their secured debt in a sale of their collateral, and that bid will be valued on a dollar-for-dollar basis.
- A credit bid can only be applied to the collateral for that debt. That said, a credit bid can be used as part of an overall bid for encumbered assets and unencumbered assets, provided that an appropriate amount of cash (or some other form of acceptable consideration) is provided for the unencumbered assets.
- In assessing the value of an overall bid, courts will aggregate the value of the credit bid and the value of the cash bid, with each bid being valued on a dollar-for-dollar basis, subject to any specific allocation issues.
- In such circumstances, allocation issues can become very important. In particular, in single sales of mixed assets (that is, where encumbered and unencumbered assets are sold together, such as in a going concern sale perhaps), it will be important for the process to ascribe a minimum cash/consideration requirement for the unencumbered assets (as a credit bid cannot be used for those).
- If participants in an auction have concerns about the ability of a party to credit bid, or the manner in which they may credit bid, it is very important for those parties – be they creditors or other

bidders – to raise those concerns early on in the process.

- This case may result in a greater emphasis being placed by Monitors on creating clear rules for credit bidding in advance of an auction, and Monitors may increasingly seek to have those rules blessed by the *CCAA* court in advance.
- The *CCAA* Court recognized that "bitter bidders" may have standing after a sale process to argue that there has been non-compliance with the Court-approved process. Beyond that, Canadian courts remain generally unsympathetic to "bitter bidders" and continue to place considerable emphasis on the sanctity and finality of a Court-approved process.
- *CCAA* courts may refuse to consider certain arguments regarding credit bidding to the extent that they constitute inter-lender disputes which should be determined according to the dispute resolution provisions (or governing law and forum provisions) of the credit or security agreement in place among the lenders. ■

1. "Credit bidding" occurs when a secured creditor (or its nominee) bids the secured debt it holds to acquire its collateral in a sale of that collateral. Credit bidding allows a secured creditor to use its debt as currency in a sale of the collateral recognizing that the proceeds of that sale would go to the secured creditor (as the priority creditor) in any event. A credit bid can only be used to acquire property that is collateral for that debt. If other unencumbered assets are to be acquired as part of the purchase, cash (or some other form of acceptable consideration) must be paid by the creditor/purchaser for the other unencumbered assets. The right of a secured creditor to credit bid is expressly provided for in the US *Bankruptcy Code* under section 363(k); it is not referenced in either the *Canadian Bankruptcy and Insolvency Act* (*BIA*) or the *CCAA*.
2. The authors are Brendan O'Neill and Joe Latham of Goodmans LLP in Toronto (Goodmans). Together, Goodmans; Lavery, de Billy L.L.P. in Montréal (Jean-Yves Simard and Jonathan Warin); and Skadden, Arps, Slate, Meagher & Flom LLP in the US (Kimberly DeBeers, Chris Dickerson and Matt Murphy) represented Black Diamond and a group of investors in their successful acquisition of the assets of the debtors through an auction-based credit bid in the Québec-based White Birch *CCAA* proceedings. The authors would like to thank Caroline Descours of Goodmans for her contribution in preparing this article.
3. For a more thorough discussion of the objections made by the Minority Lenders and the responses of BDWBI, the Debtors, the Monitor and the Courts thereto, see the record of the White Birch *CCAA* proceedings available at the Monitor's website for the proceedings: http://documentcentre.eycan.com/. In particular, see the Contestation Of The Debtors' Motion To Approve The Sale Of Substantially All Of The WB Group's Assets And Cross-Demand By The Intervening Parties dated September 23, 2010, and the Intervention And Memorandum Of Arguments Of BD White Birch Investment LLC dated September 23, 2010 (the BDWBI Intervention).
4. Section 363(k) of the US *Bankruptcy Code* states that: "(k) At a sale under subsection (b) of this section of property that is subject to a lien that secures an allowed claim, unless the court for cause orders otherwise the holder of such claim may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of the property." 11 U.S.C. §§ 101 et seq.
5. Reasons, at footnote 4: "As for the right to credit bid in a sale by auction under the *CCAA*, see Re: Maax Corporation (QSC. No. 500-11-033561-081, July 10, 2008, Buffoni J.). See also Re: Brainhunter (OSC Commercial List, no. 09-8482-00CL, January 22, 2010)."

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