

**SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF The Kami Mine
Limited Partnership, Kami General
Partner Limited, and Alderon Iron
Ore Corp.

AND IN THE MATTER of the
Bankruptcy and Insolvency Act, RSC
1985, c B-3, as amended

Estate No.
Court No.

BETWEEN:

SPROTT PRIVATE RESOURCE LENDING
(COLLECTOR), LP APPLICANT

AND:

THE KAMI MINE LIMITED PARTNERSHIP FIRST RESPONDENT

AND:

KAMI GENERAL PARTNER LIMITED SECOND RESPONDENT

AND:

ALDERON IRON ORE CORP. THIRD RESPONDENT

NOTICE OF MOTION

The Applicant, Sprott Private Resource Lending (Collector), LP will make a motion before the presiding Judge in Bankruptcy and Insolvency on _____, the ____ day of _____, 2020, at _____, or so soon thereafter as the motion can be heard at the Courthouse, Duckworth Street, St. John's, Newfoundland and Labrador.

The motion is for the following relief:

1. An order, substantially in the form of the draft model Receivership Order attached hereto, for, *inter alia*:
 - a. a court-appointed receiver pursuant to Section 243 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “**BIA**”) over the assets, undertakings, and property of the First, Second and Third Respondents (the “**Respondents**”);
 - b. for the Applicant’s costs of this Application, on a solicitor-client basis; and
 - c. for such further and other order as this Court deems just.

The grounds for the motion are:

Introduction:

1. The Plaintiff, Sprott Private Resource Lending (Collector), LP (the “**Lender**”) is a limited partnership existing pursuant to the laws of Ontario, carrying on business across Canada, including in Newfoundland and Labrador, having an address for service care of Cox & Palmer, Suite 1100, Scotia Centre, 235 Water Street, St. John’s, Newfoundland and Labrador, A1C 1B6.
2. The First Respondent The Kami Mine Limited Partnership (“**Kami LP**”) is a limited partnership existing pursuant to the laws of Ontario, carrying on business across Canada, including in Newfoundland and Labrador.
3. The Second Respondent Kami General Partner Limited (“**Kami GP**”) is a corporation incorporated pursuant to the laws of Ontario, carrying on business across Canada, including in Newfoundland and Labrador.
4. Kami GP is the managing general partner of Kami LP.

5. The Third Respondent Alderon Iron Ore Corp. (“**Alderon**”, collectively with Kami LP and Kami GP, the “**Credit Parties**”) is a corporation incorporated under the laws of British Columbia, carrying on business across Canada, including in Newfoundland and Labrador.
6. Alderon is the general partner of Kami LP.
7. HBIS International Holdings (Canada) Co., Ltd. (“**HBIS**”) is a limited partner of Kami LP.
8. Kami LP is involved in the development of an iron ore development project located on the Kamistatusset property in Newfoundland and Labrador (the “**Mining Project**”).

Debt and Security to the Lender:

9. As of May 20th, 2020, the Credit Parties are justly and truly indebted to the Lender in the amount of **USD\$13,856,007.85**, plus all interest, costs (including legal costs on a solicitor and its own client, full indemnity basis), and fees (the “**Indebtedness**”) pursuant to a credit agreement dated June 20, 2018 by and among Kami LP, as borrower, Kami GP and Alderon, as guarantors, and the Lender (the “**Loan Agreement**”). Pursuant to the Loan Agreement, the Lender made available to Kami LP a term credit facility in an amount equal to USD\$14,000,000 (“**Term Loan**”).
10. The purpose of the Term Loan was to refinance certain existing outstanding indebtedness in relation to the Mining Project.
11. The Loan Agreement provides that, among other things:
 - (a) amounts borrowed and overdue amounts accrue interest at a rate of 10% per annum, calculated daily and compounded monthly;
 - (b) interest payments will be made by Kami LP monthly;

- (c) all amounts owing pursuant to the Loan Agreement will be repaid by Kami LP on December 31, 2019 (“**Maturity Date**”), provided that the Lender retains the sole discretion to extend the Maturity Date for a period of up to an additional six months; and
 - (d) Kami LP will pay, on demand, the Lender’s reasonable legal fees (on a solicitor and own client basis) and all other costs, charges and expenses of and incidental to the recovery of all amounts owing under the Loan Agreement and the realization of the security.
12. Kami LP further provided the Lender with a promissory note dated July 10, 2018, wherein Kami LP unconditionally promises to pay to the Lender the principal sum of USD\$14,000,000 in accordance with the terms of the Loan Agreement (the “**Promissory Note**”, collectively with the Loan Agreement, the “**Loan Documents**”).

Guarantees:

13. To further secure repayment of amounts owing to the Lender under the Loan Documents, pursuant to a guarantee dated July 10, 2018 (“**Guarantee**”, collectively with the Loan Documents, “**Credit Documents**”), Kami GP and Alderon guaranteed to the Lender, jointly and severally, payment on demand of all present and future indebtedness, liabilities and obligations of Kami LP to the Lender in connection with the Loan Documents and related security, plus all reasonable out-of-pocket expenses incurred by the Lender in connection with assessment, enforcement and protection of the Lender’s rights under the Guarantee.
14. The Guarantee provides, among other things, that the Lender is not required to take any action or to exhaust its recourse against Kami LP or any other guarantor or to enforce its security before being entitled to payment from Kami GP or Alderon.
15. The Lender states that the Guarantee is valid and enforceable, and in compliance with all applicable laws.

Security:

16. In accordance with, and to secure all obligations owing to the Lender under the Loan Documents, in the case of Kami LP, and under the Guarantee, in the case of Kami GP and Alderon:
 - (a) Kami LP and Kami GP granted the Lender a mortgage and charge in and to all of their present and after-acquired personal property and all real property, including the real property and mineral rights comprising the Mining Project, pursuant to a Debenture dated July 10, 2018 (“**Debenture**”);
 - (b) Alderon granted the Lender a security interest and charge in and to all of its present and after-acquired personal property and all real property pursuant to a General Security Agreement dated July 10, 2018 (“**GSA**”); and
 - (c) Kami LP, Kami GP, and Alderon granted the Lender a security interest in certain material contracts pursuant to an Assignment of Material Contracts dated July 10, 2018 (“**Assignment of Material Contracts**”, collectively with the Debenture, “**Initial Security**”).

17. The security interest granted by the Initial Security was perfected:
 - (a) by registrations against the Credit Parties in the Personal Property Registries of:
 - (i) British Columbia made June 25, 2018;
 - (ii) Newfoundland and Labrador made July 5, 2018;
 - (iii) and Ontario made June 25, 2018;
 - (b) by registrations made in the Transfer and Mortgage Registry maintained by the Mineral Claims Recorder for Newfoundland and Labrador; and
 - (c) by registrations made in the Registry of Deeds and Companies for Newfoundland and Labrador.

Forbearances and Extensions:

18. At the end of 2019, Credit Parties were each in default of their obligations to the Lender pursuant to the Credit Documents and Initial Security.
19. The Lender agreed to forbear from the exercise of its rights under the Credit Documents and Initial Security pursuant to and in accordance with the terms of a Forbearance and Extension Agreement dated January 8, 2020 among the Credit Parties and the Lender (the “**First Forbearance Agreement**”).
20. The First Forbearance Agreement provided that, absent a default under the First Forbearance Agreement, the Credit Parties would have until February 14, 2020 to make payment of all amounts owing to the Lender.
21. The First Forbearance Agreement required, among other things, that Kami LP would provide additional security to the Lender, and in accordance with the First Forbearance Agreement, as further security for its obligations to the Lender, Kami LP provided the Lender with:
 - (a) an Assignment and Pledge of Accounts agreement dated January 8, 2020 (“**Assignment and Pledge of Accounts**”) that assigns, pledges, and transfers to the Lender, and grants the Lender a security interest in, account number 4756-458 established by Kami LP with the Bank of Montreal (“**Account**”) as security for payment of all indebtedness, liabilities and obligations of Kami LP to the Lender arising out of or connected to the Loan Documents and First Forbearance Agreement; and
 - (b) a Blocked Account Agreement dated January 8, 2020 among Kami LP, the Lender, and the Bank of Montreal regarding the Account (“**Blocked Account Agreement**”, collectively with the Assignment and Pledge of Accounts “**Additional Security**”, the Additional Security and Initial Security are collectively “**Security**”).

22. In addition to the existing registrations in the British Columbia Personal Property Registry, the Lender made a further registration in respect of the Additional Security in the British Columbia Personal Property Registry on January 9, 2020.
23. Repayment of amounts owing to the Lender was not made on February 14, 2020, and the Lender agreed to further forbear from the exercise of its rights under the Credit Documents and Security pursuant to and in accordance with the terms of an Amended and Restated Forbearance and Extension Agreement dated February 14, 2020 among the Credit Parties and the Lender (“**Second Forbearance Agreement**”, the Credit Documents, as amended by the First Forbearance Agreement and Second Forbearance Agreement are “**Supplemented Credit Documents**”).
24. The Second Forbearance Agreement provided that, absent a default under the Second Forbearance Agreement, the Credit Parties would have until March 31, 2020 to make payment of all amounts owing to the Lender.
25. The Second Forbearance Agreement required, among other things, that Kami LP would pay to the Lender a forbearance fee in the amount of USD\$420,000.00, which forbearance fee would be paid by adding the amount to the principal amount of the Loan Agreement.

Default and Demand for Repayment:

26. The Credit Parties defaulted in their obligations pursuant to the Supplemented Credit Documents and Security, including but not limited to by failing to repay amounts owing to the Lender on March 31, 2020.
27. On April 24, 2020 the Lender, through its legal counsel, issued demands to Kami LP and Kami GP for payment of all amounts outstanding and owing to the Lender and Notices of Intention to Enforce Security pursuant to subsection 244 of the *Bankruptcy and Insolvency Act*, RSC 1985 c B-3 (“**NOI**”).

28. On April 28, 2020 the Lender, through its legal counsel, issued a demand letter to Alderon for payment of all amounts outstanding and owing to the Lender and an NOI.
29. Despite the Lender's demand, each of the Credit Parties have failed or neglected to pay, and continue to fail or neglect to pay the Indebtedness (as defined herein) to the Lender.
30. As of May 20, 2020, the total indebtedness due and owing to the Lender by the Credit Parties pursuant to the Supplemented Credit Documents is USD\$13,856,007.85, plus all interest, costs (including legal costs on a solicitor and its own client, full indemnity basis), and fees (collectively, the "**Indebtedness**"), comprised as follows (all in \$USD):

Original Principal	\$14,000,000.00
Less Principal Repayment	\$1,002,235.20
Capitalized Interest	\$426,814.23
Total Principal Outstanding	\$13,424,579.03
Fee Outstanding	\$420,000.00
Capitalized Interest	\$11,428.82
Total Fee Outstanding	\$431,428.82
<u>Total</u>	\$13,856,007.85

Status of Other Creditors of the Respondents:

31. Searches by the Lender at the Registry of Deeds for Newfoundland and Labrador, the Personal Property Registries of British Columbia, Newfoundland and Labrador, and Ontario, and the Newfoundland and Labrador Judgment Enforcement Registry, reveal the following registered creditors of the Credit Parties, in addition to the Lender:

- a. In the case of Kami LP:
 - i. Metso Minerals Canada Inc.
- b. In the case of Kami GP:
 - i. Metso Minerals Canada Inc.
- c. In the case of Alderon:
 - i. None.

Proposed Receivership Proceedings:

- 32. The Security, and in particular the Debenture and the GSA, allow and provide for the Lender to bring an application seeking the appointment of a receiver over the undertakings, property and assets of the Credit Parties in the event of default with respect to the obligations of owed by the Credit Parties to the Lender, and the Lender wishes to exercise its rights pursuant to the Security at this time.
- 33. The Credit Parties no longer have any active business operations.
- 34. Furthermore, management of the Credit Parties have all resigned, and there is no one overseeing the day to day operations of the Credit Parties, nor has any of the Credit Parties taken steps to safeguard their assets.
- 35. In respect of Kami LP, HBIS has not meaningfully engaged with the Lender, has not taken any steps to take control of the operations of Kami LP, and has not taken steps to safeguard the assets of Kami LP.
- 36. There is currently a purchaser interested in acquiring substantially all of the assets of the Credit Parties, however in the absence of management of the Credit Parties, there is no party available to investigate the transaction, engage with the potential purchaser, and, if appropriate, implement the transaction.
- 37. On the basis of the foregoing, the Lender now seeks the appointment of Deloitte Restructuring Inc. as receiver of all the assets, undertakings, and property of the Respondents pursuant to section 243 of the BIA (a **Receiver**).

38. The appointment of Deloitte Restructuring Inc. as Receiver by this Court is necessary to:
- (a) immediately protect and preserve the property of the Respondents;
 - (b) investigate the potential transaction and, if appropriate, bring the transaction forward to the stakeholders and the Court for approval or to otherwise effectively deal with and sell the property of the Respondents in a manner that will maximize the value for the creditors of the Respondents; and
 - (c) to provide a more efficient forum for creditors of the Respondents to resolve priority issues, should any exist.
39. Such further and other grounds as counsel may advise.

The following documentary evidence will be used at the hearing of the motion:

- 1. The Affidavits of Narinder Nagra, sworn to on 26 May, 2020, June 3, 2020, and June 4, 2020.
- 2. Such further and other material as counsel may advise and this Court may permit.



Dentons Canada LLP
Solicitors for Sprott Private Resource
Lending (Collector), LP
c/o Cox & Palmer (as Agency Counsel)
Suite 1100, Scotia Centre
235 Water Street
St. John's, NL A1C 1B6
Attention:
Phone: 709.738.7800
Email:

TO: ENCLOSED SERVICE LIST

ISSUED at St. John's, Newfoundland and Labrador, this day of May, 2020.

SERVICE LIST IN THE MATTER OF THE RECEIVERSHIP OF THE KAMI MINE LIMITED PARTNERSHIP, KAMI GENERAL PARTNER LIMITED, AND ALDERON IRON ORE CORP.

Party	Role
<p>Dentons Canada LLP</p> <p>1500, 850-2nd Street SW Calgary, Alberta T2P 0R8</p> <p>Attention: David Mann / John Regush</p> <p>Email: david.mann@dentons.com, john.regush@dentons.com</p>	<p><i>Counsel to Sprott Private Resource Lending (Collector) LP, Secured Creditor</i></p>
<p>Cox & Palmer</p> <p>Suite 1100 Scotia Centre 235 Water Street St. John's NL A1C 1B6</p> <p>Attention: Wayne Myles / Darren O'Keefe</p> <p>Email: wmyles@coxandpalmer.com, dokeefe@coxandpalmer.com</p>	<p><i>Agency Counsel for Dentons Canada LLP</i></p>
<p>The Kami Mine Limited Partnership</p> <p>1240 – 1140 West Pender Street Vancouver, British Columbia V6E 4G1</p> <p>Fax: (604) 681-8039</p> <p>Email: oaasen@alderonironore.com</p>	<p><i>Debtor</i></p>
<p>Kami General Partner Limited</p> <p>1240 – 1140 West Pender Street Vancouver, British Columbia V6E 4G1</p> <p>Fax: (604) 681-8039</p> <p>Email: oaasen@alderonironore.com</p>	<p><i>Debtor</i></p>
<p>Alderon Iron Ore Corp.</p> <p>1240 – 1140 West Pender Street Vancouver, British Columbia V6E 4G1</p> <p>Fax: (604) 681-8039</p> <p>Email: oaasen@alderonironore.com</p>	<p><i>Debtor</i></p>
<p>McMillan LLP</p> <p>Royal Centre, 1055 W. Georgia Street, Suite 1500 PO Box 11117 Vancouver, BC V6E 4N7</p> <p>Attention: Bernhard J Zinkhofer</p>	<p><i>Counsel to HBIS International Holdings (Canada) Co., Ltd., limited partner of The Kami Mine Limited Partnership</i></p>

Email: Bernhard.Zinkhofer@mcmillan.ca	
Deloitte Restructuring Inc. 700, 850 – 2 nd street S.W. Calgary, AB T2P 0R8 Attention: Bob Taylor / Naomi McGregor Email: bobtaylor@deloitte.ca, naomcgregor@deloitte.ca	<i>Proposed Receiver of the Debtors</i>
Sprott Resource Lending Corp. 200 Bay Street, Suite 2750 Toronto, ON M5J 2J2	<i>PPR Registrant in British Columbia PPR, Newfoundland and Labrador PPR, and Ontario PPR</i>
Metso Minerals Canada Inc. P.O. Box 5900 Belleville ON K8N 5C8 and 795 George V Lachine, Quebec H8S 2R9	<i>PPR Registrant in Newfoundland and Labrador PPR and Ontario PPR</i>
Altius Resources Inc. Ben Lewis, CFO Email: blewis@altiusminerals.com	<i>Party to Royalty Agreement</i>
Canada Revenue Agency Quebec Insolvency Intake Centre Fax: 1-866-229-0839	<i>Canada Revenue Agency</i>
Workplace, Newfoundland and Labrador 146-148 Forest Road St. John's, NL A1A 3B8 Attention: Anne Martine	<i>Workplace, Newfoundland and Labrador</i>
Provincial Government Collections, Newfoundland and Labrador Account and Services, Government of NL 3 rd Floor, East Block, Confederation Building St. John's, NL Attention: Lisa Warren, Manager of Collection, Tax	<i>Provincial Government Collections, Newfoundland and Labrador</i>