

2020 01G 2883

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

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

INTERLOCUTORY APPLICATION  
(*Inter Partes*)

SUMMARY OF CURRENT DOCUMENT	
Court File Number(s):	2020 01G 2883
Date of Filing Document:	October <del>30</del> , 2020
Name of Party Filing or Person:	Deloitte Restructuring Inc., in its capacity as court-appointed receiver (the <b>Receiver</b> ) of the First, Second and Third Respondents (the <b>Companies</b> )
Applications to which Document being filed relates:	Interlocutory Application of the Receiver
Statement of Purpose in Filing:	Application by the Receiver for an Order, <i>inter alia</i> , approving the sale of the property of the Companies on the terms and conditions as set out in the First Report of the Receiver.
Court Sub-File Number, if any:	N/A

## NATURE OF APPLICATION

1. On June 17, 2020 (the "**Date of Receivership**") the Receiver was appointed by Order of this Court (the "**Receivership Order**") as the receiver of all of the assets, undertakings, and property (the "**Property**") of Alderon Iron Ore Corp. ("**Alderon**"), The Kami Mine Limited Partnership ("**Kami LP**"), and Kami General Partner Limited ("**Kami GP**") (collectively the "**Companies**") acquired for, or used in relation to the business carried on by the Companies.
2. After reviewing the Prior Sales Process (as hereinafter defined) conducted by the financial advisors to the Companies, and after conducting its own sales process, the Receiver accepted an offer (subject to Court approval) from affiliated companies of a public company (collectively the "**Purchaser**") for the purchase of the property (the "**Purchased Assets**") more particularly set out in the Asset Purchase Agreement between the Purchaser and the Receiver dated October 29, 2020 (the "**APA**") on the terms and conditions set out in the APA, a copy of which is attached to the Confidential Supplement of the First Report of the Receiver dated October 29, 2020 (the "**Confidential Supplement**") as Appendix "B".
3. The Receiver now seeks an Order:
  - (a) abridging the time for service, validating service, and dispensing with further service of the within Application;
  - (b) approving the activities, fees and disbursements of the Receiver as set out in the First Report of the Receiver;
  - (c) approving the sale of the Purchased Assets on the terms and conditions as set out in the APA;
  - (d) vesting title in the Purchaser free and clear of all liens, charges and encumbrances; and
  - (e) directing that the Confidential Supplement be sealed with the Court unless otherwise ordered by the Court, until such time as the sale has been completed by the Receiver.

## MATERIAL FACTS

### Appointment of Receiver

4. Pursuant to sections 3(k), 3(l) and 3(m) of the Receivership Order, the Receiver is empowered to sell, convey, transfer, lease or assign the Property or any part or parts thereof, provided that any transaction exceeding \$250,000.00 is subject to approval of this Court.
5. Since the date of the Receivership Order, the Receiver has undertaken and performed the following activities:

- (a) Arranged to maintain the insurance coverage over the Companies' assets and had the Receiver added as a loss payee on the existing insurance policy of the Companies which expires October 31, 2020;
- (b) Issued a statutory Notice and Statement of the Receiver to all known creditors of the Companies pursuant to subsections 245(1) and 246(1) of the Bankruptcy and Insolvency Act (Canada);
- (c) Opened new trust accounts in the name of the receivership estate to facilitate future receipts and disbursements;
- (d) Contacted the Port Authority of Sept-Iles (the "**Port Authority**") with respect to the multiuser wharf contract held between the Port Authority and the Companies dated July 13, 2012, as amended (the "**Port Contract**");
- (e) Contacted Metso Minerals Canada Inc. ("**Metso**"), with respect to the Companies' assets in Metso's possession;
- (f) Contacted Houseman Limited ("**Houseman**") with respect to the warehouse lease held between Kami LP and Houseman (the "**Houseman Lease**");
- (g) Terminated the Iron Ore Off Take Agreement between Kami LP and Hebei Iron & Steel Group Co. Ltd. ("**Hebei**") dated August 31, 2012;
- (h) Contacted the Province of Newfoundland and Labrador with respect to the various mining licenses issued to the Companies;
- (i) Informed Canada Revenue Agency ("**CRA**") of the receivership and requested confirmation of account balances and established new tax accounts for the post-receivership period;
- (j) Informed Quebec Finance of the receivership and requested confirmation of account balances;
- (k) Conducted a review of the Prior Sales Process conducted by the financial advisors to the Companies;
- (l) Undertook extensive discussions with the Purchaser and its legal counsel to negotiate terms of the proposed Asset Purchase Agreement;
- (m) Corresponded with the Receiver's legal counsel, on various legal matters relating to the receivership including an independent review of the validity and enforceability of the security documents of Sprott Private Resource Lending (Collector), LP ("**Sprott**");
- (n) Corresponded with several creditors and other stakeholders;
- (o) Corresponded with other interested parties with respect to the assets of the Companies;

- (p) Drafted, reviewed and finalized the First Report of the Receiver dated October 29, 2020 (the "**First Report**") and the Confidential Supplement thereto; and
- (q) Addressed additional matters of a general and specific nature as they arose from time to time.

#### **Nature of the Purchased Assets**

6. The Purchased Assets include the following:

- (a) The Mining Rights with respect to the mineral properties located in western Labrador, collectively referred to as the Kamistiatusset property, including the Mineral Licenses and Mining and Surface Leases (collectively, the "**Kami Mine**")
- (b) Intellectual Property;
- (c) The Companies' rights and entitlements to various Assigned Contracts, including but not limited to the Port Contract;
- (d) Permits and Licenses;
- (e) Books and Records; and
- (f) SGS Drill Samples

All as defined and more particularly set out in the APA.

#### **Marketing and Sales Process**

- 7. As discussed in paragraph 8 of the First Report, effective January 24, 2019, Scotia Capital was retained as financial advisor to Alderon to evaluate potential strategic transactions and to advance possible equity and debt financing for the construction and commissioning of the Kami Mine (the "**Prior Sales Process**").
- 8. Scotia Capital prepared an Iron Ore Investment Opportunity presentation (the "**Investment Package**") and in May 2019, provided that Investment Package to a group of targeted potential investors. Any party expressing an interest in the opportunity was required to sign a non-disclosure agreement ("**NDA**") prior to being provided with due diligence materials.
- 9. Based on the available materials provided to the Receiver, the Prior Sales Process resulted in the following:
  - (a) 41 equity/strategic investors were contacted and provided the Investment Package;
  - (b) 12 project finance providers were contacted and provided the Investment Package;
  - (c) Approximately 15 interested parties negotiated and executed an NDA and were provided with appropriate due diligence materials; and

- (d) As noted in paragraphs 9 and 10 of the First Report, one LOI was received and negotiated; however, was ultimately terminated by the investor due to the uncertainty created by the COVID-19 pandemic.
10. Subsequent to the termination of the LOI and the resignation of all Directors and Officers of the Companies, one of the interested parties initially contacted by Scotia Capital provided Sprott with an offer to purchase the Kami Mine. As at the Date of Receivership, a draft APA dated May 12, 2020 had been provided by the interested party (the "Proposed Purchaser") to Sprott and Sprott was in support of a sale to the Proposed Purchaser, even though Sprott would suffer a shortfall on its loans in excess of \$6.0 million.
  11. The Receiver reviewed all available information in connection with the Prior Sales Process. For a period of over 18 months, the Companies, with the assistance of both external legal and financial advisors, explored all available alternatives including strategic transactions and equity and debt financings. The Prior Sales Process undertaken by Scotia Capital was, in the Receiver's view, a thorough and broad canvassing of the world-wide market prior to the receivership. Based on its review, the Receiver concluded that to conduct a second sales process, given the significant marketing efforts undertaken by Scotia Capital, was likely not in the economic interests of the receivership estate as there was no certainty that an offer higher than the offer submitted by the Proposed Purchaser could be obtained. The Receiver would have to generate a substantially higher purchase price in order for there to be any distribution to creditors other than Sprott.
  12. Moreover, the Receiver did not have sufficient funding to conduct another sales and solicitation process and, even if the Receiver could have borrowed such funds, there was a significant potential to further erode Sprott's security position if a higher sales price was not achieved through a second sales process.
  13. Consequently, the Receiver, based on its due diligence, was prepared to support the sale of the Kami Mine to the Proposed Purchaser.
  14. On August 10, 2020 and August 17, 2020, the Receiver was provided with unsolicited expressions of interest to purchase the Kami Mine and other assets from two other interested parties. The Receiver understands that these two interested parties were aware of and/or involved in the Prior Sales Process.
  15. The Receiver participated in several discussions with the interested parties to assess the degree of each party's interest and to determine whether the parties had the wherewithal to conduct a transaction in the magnitude of the expressions of interest. The Receiver also discussed the two unsolicited expressions of interest with Sprott.
  16. As a result of the receipt of the two unsolicited expressions of interest and the apparent seriousness of both parties, it appeared to the Receiver that there now existed a competitive sale environment for the Kami Mine and that by the Receiver allowing time for the two new interested parties to complete their due diligence that a higher price for the Kami Mine could be achieved. Accordingly, the Receiver, with the concurrence of Sprott, provided the interested parties with an opportunity to submit unconditional definitive offers to the Receiver by September 25, 2020.

17. The Receiver was provided with three (3) offers all of which were greater than the offer provided to Sprott prior to the Date of Receivership. Two (2) of the offers received were superior offers; however, they were very similar in total consideration. Due to this competitive environment, the Receiver invited all parties to submit their final and best offers (the "**Final Offers**") by no later than Monday, October 5, 2020.
18. A comparison of the three (3) Final Offers submitted to the Receiver are detailed in the Confidential Supplement.
19. The Receiver is of the view that the offer made by the Purchaser, as further described in the APA, is the superior offer and should be approved by the Court for the following reasons:
  - (a) The APA is sufficient to satisfy the secured indebtedness outstanding to Sprott;
  - (b) The APA will result in full recovery for any other secured creditors, full recovery for all unsecured creditors (subject to the receipt of valid proofs of claim) and substantial recovery for the shareholders of the Companies;
  - (c) The APA provides the greatest amount of up-front cash;
  - (d) The APA provides for a lesser amount of risk and, subject to the issuance of the Approval and Vesting Order and to customary governmental consent for the assignment of mining rights, ensures certainty of closing imminently;
  - (e) The APA provides for the assignment to the Purchaser of the rights and obligations of the Companies under several agreements, being to the benefit of these contracting parties and reducing the amount of claims or potential claims against the receivership estate;
  - (f) The Receiver's fees and those of its legal counsel will be satisfied from the sales proceeds; and
  - (g) The Receiver is advised that Sprott supports the APA.
20. Based on the Receiver's experience, the nature of the Companies, the Prior Sales Process, and the comparison of offers received, the Receiver is of the view that the APA contains commercially reasonable terms and will maximize the available recovery for the receivership estate. Additional reasons and support are included in the Confidential Supplement.
21. The Receiver therefore recommends that the APA be approved by this Honourable Court.

#### **Approval and Vesting Order**

22. The Receiver seeks a vesting order for the Purchased Assets, for the following reasons:
  - (a) The APA is conditional upon the Purchaser receiving an Approval and Vesting Order on closing;

- (b) A vesting order will allow the Receiver to complete the transaction contemplated by the APA in a shorter period of time than would be possible if the Receiver is required to negotiate with each of the secured creditors or other claimants for a release of their respective encumbrances;
  - (c) A vesting order will give the Purchaser confidence that it will be obtaining title to the Purchased Assets free and clear of any and all security interests, mortgages, trusts, deemed trusts, liens or other claims; and
  - (d) A vesting order will substitute the sale proceeds for the Purchased Assets and provide a forum that is fair to all parties, the receivership proceedings, to establish the respective priorities to the sale proceeds, in contrast to the Receiver having to negotiate agreements with the secured creditors or other claimants in the absence of a vesting order.
23. The Receiver therefore seeks a vesting order from this Honourable Court, approving the APA and vesting all right, title and interest of the Companies in the Purchased Assets in and to the Purchaser upon the filing of a certificate by the Receiver certifying that the transactions contemplated by the APA have been completed to the satisfaction of the Receiver.

#### **Sealing Order**

24. The Receiver requests that a Court Order be granted sealing the Confidential Supplement and that it remain under seal unless otherwise ordered by the Court, to avoid any negative impact that could result from dissemination of the information contained in the Confidential Supplement. The Confidential Supplement contains commercially sensitive information pertaining to the valuation of the Companies and certain confidential information in respect of the offers submitted to the Receiver. Publication of the information contained in the Confidential Supplement would pose serious risk to the commercial interests of stakeholders and would irreparably harm the Receiver's efforts to maximize realizations from the Property should the transaction pursuant to the APA not close.
25. Any interested party may apply, on notice to the Receiver, to vary the terms of the Sealing Order or to unseal the Confidential Supplement.

#### **Order Validating Service**

26. There is a limited timeframe provided by the APA to obtain court approval and close the transaction. The Receiver has provided notice of these proceedings to all parties that received notice of the previous application seeking the Receivership Order, as well as to the Port, Hebei, Houseman and the three bidders that provided Final Offers to the Receiver. As noted in the First Report, the Receiver has been unable to identify all of the unsecured creditors of the Companies. However, following the closing of the sale of the Purchased Assets, the Receiver intends to undertake a claims solicitation process for unsecured creditors and shareholders to submit claims to the Receiver. The Receiver anticipates making a further application to Court for the approval of a claims process.

27. Due to the difficulty in identifying and serving all of the unsecured creditors, the Receiver seeks an order abridging the time for service, validating service and dispensing with further service of this Application to any other creditors of the Companies.

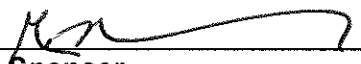
**RELIEF SOUGHT**

28. The Receiver repeats the foregoing paragraphs and requests an Order:

- (a) abridging the time for service, validating service, and dispensing with further service of the within Application;
- (b) approving the activities, fees and disbursements of the Receiver as set out in the First Report of the Receiver;
- (c) approving the sale of the Purchased Assets on the terms and conditions as set out in the APA;
- (d) vesting title in the Purchaser free and clear of all liens, charges and encumbrances;
- (e) directing that the Confidential Supplement be sealed with the Court unless otherwise ordered by the Court, until such time as the sale has been completed by the Receiver; and
- (f) Such further and other relief as counsel may advise and this Honourable Court deems just.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED.**

**DATED AT** the City of St. John's, in the Province of Newfoundland and Labrador, this 30<sup>th</sup> day of October, 2020.

  
\_\_\_\_\_  
**Geoffrey Spencer**  
**McInnes Cooper**  
**Solicitors for the Receiver**  
10 Fort William Place  
5th Floor, Baine Johnston Centre  
PO Box 5939  
St. John's, NL A1C 4X4

To: Supreme Court of Newfoundland and Labrador  
General Division (In Bankruptcy)  
P.O. Box 937  
313 Duckworth Street  
St. John's, NL A1C 5M3



And To: The Service List attached as Schedule "A"

**Issued** at St. John's, in the Province of Newfoundland and Labrador, this \_\_\_\_\_ day of October, 2020.

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**Court Officer**

2020 01G 2883

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KAMI GENERAL PARTNER LIMITED

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AND:

ALDERON IRON ORE CORP.

THIRD RESPONDENT

**NOTICE TO THE RESPONDENTS**

You are hereby notified that the foregoing application will be made to the judge presiding in Chambers at the Court House at St. John's, Newfoundland and Labrador on Friday, the 13<sup>th</sup> day of November, 2020 at 10:00 am.

To: The Service List attached as Schedule "A"