

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: | May 13 , 2022 |
| Name of Party Filing or Person: | Deloitte Restructuring Inc., in its capacity as court-appointed receiver (the Receiver) of the First, Second and Third Respondents (the Companies) |
| 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 distribution of funds |
| 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 (the "**Kami Project**").
2. On November 13, 2020, a Sale Approval and Vesting Order was issued by this Court approving the sale of certain assets of the Companies (the "**Kami Assets**") to Québec Iron Ore Inc. and 12364042 Canada Inc. (collectively, the "**Purchaser**").
3. On April 1, 2021, the sale of the Kami Assets was concluded and the sale proceeds for the Assets (the "**Sale Proceeds**") were paid to the Receiver.
4. On August 13, 2021, a Claims Process Order was issued by this Court directing the Receiver to solicit claims from all creditors and shareholders in respect of the Companies (the "**Claims Process Order**").
5. 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 described in the Third Report of the Receiver (the "**Third Report**"), including, without limitation, the steps taken by the Receiver pursuant to the Receivership Order, and the fees of the Receiver's legal counsel;
 - (c) approving the Receiver's Statement of Receipts and Disbursements for the period from June 17, 2020 to April 25, 2022;
 - (d) approving the disallowance of the Metso Claim as described in paragraphs 35-42 of the Third Report;
 - (e) approving the distribution of funds to proven creditors as described in paragraphs 52-59 of the Third Report;
 - (f) approving the first interim distribution to shareholders and the anticipated second interim distribution to shareholders as described in paragraphs 52-59 of the Third Report; and
 - (g) providing such further or other relief that the Court considers just and warranted in the circumstances.

MATERIAL FACTS

6. Since the date of the Second Report of the Receiver, the Receiver has undertaken and performed the following activities:

- a) corresponded with various creditors, stakeholders, and interested parties with respect to the receivership proceedings and the established claims process;
- b) addressed insurance matters, including policy renewals;
- c) corresponded with Metso Minerals Canada Inc. ("**Metso**") on several occasions, with respect to the Companies' assets in Metso's possession;
- d) corresponded with the Toronto Stock Exchange Trust (the "**TSX Trust**" or "**Trustee**") with respect to Alderon's share register to assist in the solicitation of shareholder claims;
- e) corresponded with CDS Clearing and Depository Services Inc. ("**CDS**") with respect to Alderon's shareholders of record to assist in the solicitation of shareholder claims;
- f) corresponded with various investment brokerages on several occasions with respect to their registered shareholdings of Alderon;
- g) corresponded with various shareholders on numerous occasions with respect to their shareholdings of Alderon;
- h) completed a review of all creditor claims and all shareholder claims filed with the Receiver as further discussed in paragraphs 29-51 of the Third Report;
- i) correspondence with Maynards Industries Canada Ltd. ("**Maynards**") and certain interested parties with respect to the sale of the Equipment (as defined in the Third Report);
- j) maintained storage for the Equipment located in Trois-Rivieres, Quebec;
- k) responded to queries from the Canada Revenue Agency ("**CRA**") regarding the Companies' Goods and Services Tax ("**GST**");
- l) addressed post-receivership GST matters;
- m) corresponded with McInnes Cooper, the Receiver's legal counsel, from time to time on various legal matters relating to the receivership administration;
- n) drafted, reviewed and finalized the Third Report; and
- o) addressed additional matters of both a general and specific nature as they arose from time to time, not referred to above.

Creditor Claims Process

7. On August 27, 2021, pursuant to the Claims Process Order, the Receiver sent a claims package and proof of claim (the "**Creditor Claims Package**") by regular mail to all known creditors of Kami LP, Kami GP, and Alderon.
8. The Receiver also posted electronic copies of the Creditor Claims Package on the Receiver's website at www.insolvencies.deloitte.ca/en-ca/Kami on the same day.

9. Metso filed one secured claim totaling approximately USD\$5.1 million against each of Kami LP, Kami GP, and Alderon respectively. In its claim, Metso claims that the amount relates to autogenous grinding and regrinding ball mills (the "**Assets**") pursuant to Purchase Order No. KAMI-WPO-POD-MS0002 dated August 8, 2013 entered into between Kami LP and Metso, as amended and revised from time to time, namely by Revision no.1 dated February 12, 2014, Revision no.2 dated May 14, 2014 and Amendment dated November 13, 2014 (the "**Purchase Order**"). The Receiver notes as follows with respect to the Assets:
 - (a) The value of the Purchase Order totalled approximately USD\$18.4 million (excluding tax) payable on a percentage of completion basis. As at the Date of Receivership, Kami LP had advanced payments totalling approximately USD\$14.5 million (79% of the total Purchase Order);
 - (b) On June 3, 2020, Metso issued a demand for payment with respect to the Assets for the balance of the Purchase Order in the amount of USD\$3.9 million (excluding tax) and outstanding storage fees of USD\$150,000 (the "**Demand Letter**"). The Demand Letter also asserted ownership of the Assets in accordance with certain terms and conditions in the Purchase Order;
 - (c) Since the Date of Receivership, Metso has invoiced approximately \$430,000 in monthly storage fees to the Receiver. As Metso is asserting ownership of the Assets, the Receiver has not remitted payment of such storage costs.
10. It is the Receiver's position that Metso's claim is only against Kami LP and that Metso has no claim against Kami GP or Alderon, nor should Metso have registered any interest in the Assets against Alderon and Kami GP.
11. On June 2, 2021, the Receiver advised Metso that it did not oppose Metso's efforts to resell the Assets provided that:
 - (a) Metso shall make commercially reasonable efforts to maximize the value of the Assets;
 - (b) Metso shall seek the Receiver's consent to any proposed sale of the Assets;
 - (c) Metso shall provide the Receiver with a full accounting of any sale of the Assets; and
 - (d) Metso shall forward to the Receiver any surplus funds from the sale proceeds following payment of the Metso payable.
12. As noted above, Kami LP has paid approximately USD\$14.5 million of the Assets' purchase price of USD\$18.4 million, or approximately 79% of the purchase price. It is the Receiver's position that the Assets held by Metso have a value greater than the amount owed to Metso and that Metso, upon sale of the Assets, is not entitled to keep any surplus proceeds above what they are owed. Accordingly, Metso must account to the Receiver for the sale proceeds and remit to the Receiver the surplus funds generated on a sale of the Assets, due to Kami LP's prior payments to Metso of USD\$14.5 million.
13. On March 7, 2022, the Receiver issued a Notice of Revision or Disallowance with respect to Metso's claim. The Receiver subsequently received three (3) Creditor Notices of Dispute from Metso with respect to its claims against the three (3) Kami Group entities.

14. The Receiver repeats the foregoing paragraphs and seeks the following Orders with respect to the Metso claims:
 - (a) approving the disallowances issued by the Receiver in respect of the Metso claims made against Alderon and Kami GP; and
 - (b) approving the disallowance issued by the Receiver in respect of the Metso claim made against Kami LP;
 - (c) requiring Metso to do the following in connection with any sale of the Assets:
 - (i) obtain the consent of the Receiver to any proposed sale of the Assets;
 - (ii) provide an accounting of any sale of the Assets to the Receiver; and
 - (iii) remit to the Receiver all surplus funds generated on a sale of the Assets, after satisfaction of amounts owed to Metso.

Shareholder Claims Process

15. Pursuant to the Claims Process Order, the Receiver published an advertisement in USA Today seeking the claims of Alderon shareholders on August 1, 2021 and August 6, 2021 respectively.
16. On August 27, 2021, the Receiver sent notice of the liquidation of shares (the "**Liquidation Notice**") by regular mail, email, courier services or facsimile to 196 shareholders of Alderon as at June 17, 2020 (the "**Record Date**") based on the share register provided by TSX Trust and the Holders of Record provided by CDS.
17. On August 27, 2021, the Receiver also posted electronic copies of the Liquidation Notice on the Receiver's website at www.insolvencies.deloitte.ca/en-ca/Kami.
18. As at the Record Date, based on Alderon's available financial records, a total of 141,728,139 shares had been issued. The Receiver reviewed the latest Alderon financial statements available on the System for Electronic Document Analysis and Retrieval ("**SEDAR**") used for filing most securities related information with the Canadian securities regulatory authorities and an Alderon Report of Exempt Distribution also filed on SEDAR to confirm that the quantum of shares issued by Alderon reconciled to the share register provided by TSX.
19. All current funds held and future funds to be paid to the Receiver are held in Kami LP, as the Property was wholly owned by Kami LP. The Receiver currently holds approximately \$14.3 million in its receivership trust account after addressing various fees and expenses and expects to receive an additional \$10 million (the "**Production Payment**") from the Purchaser over time based on future production of the Kami Mine pursuant to the court approved Asset Purchase Agreement (the "**APA**"). The Receiver intends to hold back the amount of \$500,000.00 (the "**Reserved Funds Holdback**") for the ongoing administration of these receivership proceedings.
20. The Receiver proposes to distribute approximately \$13.7 million to the creditors and shareholders in the following manner:
 - (a) \$3.6 million will be paid to the creditors of Kami LP. The Receiver will hold back \$1,105 on account of CRA's contingent claim against Kami LP (the "**Kami LP Holdback**");
 - (b) \$10.1 million will be paid to the shareholders of Kami LP as follows:

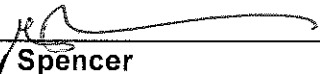
- (i) \$102 to Kami GP;
 - (ii) \$2.5 million to Hebei LP; and
 - (iii) \$7.6 million to Alderon
 - (c) It is the Receiver's position that Kami GP has no creditors. Accordingly, from the \$102 paid to Kami GP, \$76 will be paid to Alderon and \$25 will be paid to Hebei LP;
 - (d) From the \$7.6 million paid to Alderon, \$113,036 will be paid to the Alderon creditors. The Receiver will hold back \$517,329 on account of CRA's contingent claim against Alderon (the "**Alderon Holdback**") and the Receiver will distribute the remaining funds to the Alderon shareholders.
21. The amount to be paid to each creditor and to each shareholder is set out in Appendices "C" and "D" to the Third Report.
22. As discussed in the Second Report, the TSX register indicated that there were approximately 136 shareholders holding less than 50 shares resulting in a distribution of less than \$10 for each of those shareholders. The Receiver proposed in its Second Report to adopt the materiality guideline set out in Directive 18 of the BIA with respect to those 136 shareholders and not make any distribution of less than \$10. The materiality guideline was approved by the Court. However, there are seven (7) shareholders that will not receive a distribution equal to or greater than \$10 until the Receiver makes the third and final distribution to the shareholders. Accordingly, the Receiver proposes to hold back a total of \$137 from the first and second distribution to shareholders (the "**Shareholder Holdback**") such that these seven (7) shareholders will receive funds upon the Receiver making the third and final shareholder distribution.
23. As noted in the Third Report, the future payments to be paid to the Receiver by the purchaser are based on future production at the Kami Mine. The Receiver does not anticipate receiving any payments from the Purchaser until late 2024 and the remaining payments in 2025. Therefore, the Receiver anticipates making three distributions to shareholders based on the terms of the APA. The first payment as noted herein, a second payment once the Receiver has accumulated additional funds of \$6.0 million (the "**Second Distribution to Shareholders**") and a third payment once the Receiver has received all the funds from the Purchaser.
24. For efficiency purposes, the Receiver proposes that the distribution to the creditors, the first distribution to the shareholders and the proposed Second Distribution to the Shareholders be approved by this Court concurrently. Accordingly, the Receiver respectfully requests that this Honourable Court make orders approving the following:
- (a) The distribution to the creditors of Kami LP;
 - (b) The Reserved Funds Holdback;
 - (c) The Kami LP Holdback;
 - (d) The distribution to the Kami LP shareholders;
 - (e) The distribution to the Kami GP shareholders;
 - (f) The distribution to the creditors of Alderon;
 - (g) The Alderon Holdback;
 - (h) The Shareholder Holdback;
 - (i) The distribution to the Alderon shareholders; and
 - (j) The Second Distribution to the Shareholders.

RELIEF SOUGHT

25. 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 described in the Third Report, including, without limitation, the steps taken by the Receiver pursuant to the Receivership Order, and the fees of the Receiver's legal counsel;
 - (c) approving the Receiver's Statement of Receipts and Disbursements for the period from June 17, 2020 to April 25, 2022;
 - (d) approving the disallowance of the Metso Claim as described in paragraphs 35-42 of the Third Report;
 - (e) approving the distribution of funds to proven creditors as described in paragraphs 52-59 of the Third Report;
 - (f) approving the first interim distribution to shareholders and the anticipated second interim distribution to shareholders as described in paragraphs 52-59 of the Third Report; and
 - (g) providing such further or other relief that the Court considers just and warranted in the circumstances.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED AT the City of St. John's, in the Province of Newfoundland and Labrador, this 13th day of May, 2022.



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 May, 2022.

Court Officer

2020 01G 2883

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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

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 _____, the _____ day of May, 2022 at 10:00 am.

To: The Service List attached as Schedule "A"

SCHEDULE "A"

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

| Party | Role |
|---|--|
| <p>Dentons Canada LLP</p> <p>1500, 850-2nd Street SW Calgary, Alberta T2P OR8</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><i>Counsel to Sprott Resource Lending Corp.</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</p> <p>Email: wmyles@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> |

| Party | Role |
|---|--|
| <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>Email: Bernhard.Zinkhofer@mcmillan.ca</p> | <p><i>Counsel to HBIS International Holdings (Canada) Co., Ltd., limited partner of The Kami Mine Limited Partnership</i></p> <p><i>Counsel to Hebei Iron & Steel Group Co. Ltd.</i></p> |
| <p>Langlois</p> <p>1250 Rene Lavesque Boulevard Montreal, Quebec H3B 4W8</p> <p>Attention: Eugenie Lefebvre</p> <p>Email: Eugenie.lefebvre@langlois.ca</p> | <p><i>Counsel to Metso Minerals Canada Inc.</i></p> |
| <p>Altius Resources Inc.</p> <p>Ben Lewis, CFO</p> <p>Email: blewis@altiusminerals.com</p> | <p><i>Party to Royalty Agreement</i></p> |
| <p>Canada Revenue Agency</p> <p>Quebec Insolvency Intake Centre</p> <p>Fax: 1-866-229-0839</p> | <p><i>Canada Revenue Agency</i></p> |
| <p>Workplace, Newfoundland and Labrador</p> <p>146-148 Forest Road St. John's, NL A1A 3B8</p> <p>Attention: Ann Martin Email: ann.martin@workplacenl.ca</p> | <p><i>Workplace, Newfoundland and Labrador</i></p> |
| <p>Provincial Government Collections, Newfoundland and Labrador</p> <p>Account and Services, Government of NL 3rd Floor, East Block, Confederation Building St. John's, NL Attention: Lisa Warren, Manager of Collection, Tax</p> <p>Email: lisawarren@gov.nl.ca</p> | <p><i>Provincial Government Collections, Newfoundland and Labrador</i></p> |

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|---|--|
| <p>Curtis Dawe</p> <p>139 Water Street, 11th Floor St. John's, NL A1C 5J9</p> <p>Attention: Gregory M. Smith, Q.C.</p> <p>Email: gsmith@curtisdawe.com</p> | <p><i>Counsel to Worley Canada Services Ltd.</i></p> |
|---|--|