

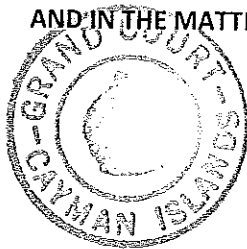
IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

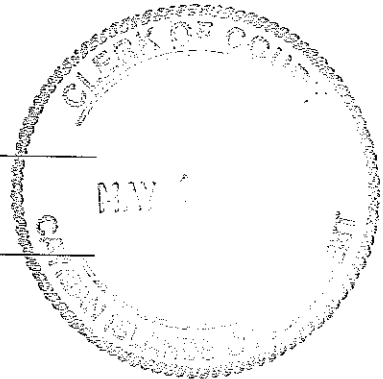
CAUSE NO. FSD 0073 OF 2015 ( ) NRCC

IN THE MATTER OF THE COMPANIES LAW (2013 REVISION)

AND IN THE MATTER OF DEVI LIMITED



WINDING UP PETITION



To: The Grand Court of the Cayman Islands

The humble petition of Gerald Metals S.A. of 29, Rue de la Gare, 1110, Morges, Switzerland (the *Petitioner*) shows THAT:

**BACKGROUND**

1. Devi Limited (the *Company*) is a Cayman Islands exempted company incorporated on 18 August 2006 under the company number CN-172840.
2. The registered office of the Company is situated at the offices of ITA Bank & Trust, Suite 4210, 2<sup>nd</sup> Floor, Canella Court, 48 Market Street, Camana Bay, PO Box 32203, Grand Cayman, KY1-1208, Cayman Islands.
3. The Company is the holding company of an international group of mining companies (the *Zamin Group*) focussed on iron ore production, development and exploration.

**THE PETITIONER**

4. The Petitioner is a company registered in Switzerland under company number CH- 550-0106800. It is a member of a group of companies involved in the business of trading iron ore and other raw materials.

5. The Petitioner presents this Petition pursuant to section 94(1)(b) of the Companies Law (2013 Revision) (the *Law*) on the basis that the Company is unable to pay its debts within the meaning of section 93 of the Law.

#### EVENTS

6. On 23 July 2014 the Petitioner entered into a Framework Purchase and Advance Payment Contract (the *Offtake Agreement*) with Zamin Amapá Mineração S.A, Zamin Trading DMCC, Zamin Amapa SPV Limited and Zamin Amapa Ltd (together, the *Sellers*).
7. Among other things, the Offtake Agreement provided for:
  - a. Advance payments to be made by the Petitioner in respect of future deliveries of iron ore by the Sellers from the region of Amapá in the North-East of Brazil; and
  - b. Amounts payable by the Sellers to the Petitioner under existing agreements, which were rolled up into the payment obligations of the Sellers under the Offtake Agreement.
8. The Offtake Agreement expressly provided that, if shipment of the iron ore was not effected within 90 days of the scheduled shipment date, the “[Sellers] shall reimburse the [Petitioner] promptly upon first written request...of all payments outstanding plus a fixed annual interest sum of 3 month Libor plus 12%” i.e. the Sellers would reimburse the Petitioner’s advance payments, all amounts rolled up from previous agreements, interest on those amounts and other expenses related to the operation of the Offtake Agreement.
9. In addition, the Offtake Agreement expressly provided for amortization payments in respect of the advance payments regardless of the amount of iron ore actually shipped. The amortization payments would fall due for payment 5 days after the last day of each month. Interest of 3 month Libor +12% per annum would accrue on those amounts until they were repaid.
10. The Offtake Agreement further provided for an additional 1% of interest for every additional month of delay in repayment, subject to the maximum interest allowed under the applicable law.

## GUARANTEE

11. It was a condition precedent under the Offtake Agreement that the Sellers would procure guarantees of (i) the Company and (ii) Zamin Holdings Limited (*Zamin Holdings*) to secure the performance, payment and indemnity obligations of the Sellers under the Offtake Agreement. The Company and Zamin Holdings are related companies to the Sellers.
12. The Company entered into a Deed of Guarantee and Indemnity with the Petitioner dated 23 July 2014 (the *Devi Guarantee*), under which it agreed inter alia to:
  - 12.1 Guarantee (i) as primary obligor (and not merely as surety) the due and punctual payment by the Seller of all sums of money which may from time to time and at any time be or become due to the Petitioner under the Offtake Agreement and (ii) performance of the Sellers' obligations under the Offtake Agreement; and
  - 12.2 Indemnify the Petitioner in respect of all costs and expenses (including legal expenses) on a full indemnity basis incurred in connection with the enforcement of the *Devi Guarantee*.
13. For the avoidance of doubt, each of the Company, Zamin Holdings and Zamin Americas Ltd. (*Zamin Americas*) (another Cayman Islands company related to the Sellers) has guaranteed and indemnified the Sellers for the full amount of any liabilities owed by them under the Offtake Agreement, and any payments made by the Sellers, Zamin Holdings or by Zamin Americas would reduce the Company's liability under the *Devi Guarantee* accordingly.
14. It was an express provision of the *Devi Guarantee* that the Petitioner "shall not be obliged before taking steps to enforce any of [its] rights and remedies under the *Devi Guarantee*...to make...any demand or seek to enforce any claim, right or remedy against the Sellers or any other person".
15. The governing law of the *Devi Guarantee* is English law.

## BREACH OF CONTRACT AND FAILURE TO PAY UNDER THE DEVI GUARANTEE

16. In breach of their obligations under the Offtake Agreement, the Sellers, among other breaches, have not shipped any iron ore to the Petitioner since October 2014 and have not made any of the scheduled amortization or interest payments described above.
17. On 4 December 2014 the Petitioner wrote to Zamin Amapa detailing the Sellers' breach of the Offtake Agreement. None of the Sellers or their affiliates has made any payment, or otherwise performed in whole or part, under those demands by the Petitioner. In particular, none of the Sellers has contended that the amounts that the Petitioner has demanded are, for any reason, not due and payable to the Petitioner.
18. The Petitioner subsequently also wrote to each of the Company and Zamin Holdings on 29 December 2014 demanding payment of US\$130,000,000.00 plus costs and interest (being the amount then outstanding to the Petitioner under the Offtake Agreement) under the terms of the guarantees entered into by those companies.
19. On 13 April 2015, the Petitioner served on the Company by hand at its registered office a Statutory Demand (the *Statutory Demand*) under section 93 of the Law which sought payment of the outstanding debt owed under the Devi Guarantee in the sum of USD134, 860,855.88 plus accrued interest in accordance with the terms of the Devi Guarantee. Statutory demands for payment were also served on Zamin Americas and Zamin Holdings.
20. The Statutory Demand specified that it constituted a written request for payment under clause 11 of the Offtake Agreement, the relevant provision of which states that '*in the event a shipment is not effected within 90 days of the scheduled shipment date for whatever reason, including Force Majeure, the Sellers shall reimburse the Buyer promptly upon first written request by the Buyer of all payments outstanding plus a fixed annual interest sum of 3 month Libor plus 12%*'.
21. To date no payment has been made by the Company of the amounts outstanding to the Petitioner under the Devi Guarantee.

## GROUNDINGS FOR THE PETITION

22. The Petitioner presents this Petition on the ground that the Company is insolvent and unable to pay its debts in accordance with section 92(d) and section 93(a) of the Law, which provides that:

*"A company shall be deemed to be unable to pay its debts if-*

*(a) a creditor by assignment or otherwise to whom the company is indebted at law or in equity in a sum exceeding one hundred dollars then due, has served on the company by leaving at its registered office a demand under his hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand, neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor."*

**YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT:**

1. The Company be placed into official liquidation;
2. Mr Hugh Dickson of Grant Thornton, 5th Floor, Bermuda House, Dr. Roy's Drive, PO Box 1044, Grand Cayman and Mr Stephen J Akers of Grant Thornton, 30 Finsbury Square, London, EC2P 2YU be appointed joint official liquidators of the Company (*JOLs*).
3. The *JOLs* shall not be required to give security for their appointment.
4. The *JOLs* shall be authorised to exercise any of the powers conferred on them by the Court pursuant to Section 110(2) and Parts I and II of the Third Schedule of the Law without the further sanction or intervention of the Court.
5. The *JOLs* be authorised to carry out any act or exercise any power considered by them to be necessary or desirable in connection with the liquidation of the Company and the winding-up of its affairs and to prevent the dissipation of the Company's assets.
6. No suit, action or other proceeding shall be proceeded with or commenced against the Company except with the leave of the Court and subject to such terms as the Court may impose.
7. No disposition of the Company's property by or with the authority of the *JOLs* in carrying out their duties and functions and exercise of their powers shall be voided by virtue of section 99 of the Law.

**NOTICE OF HEARING**

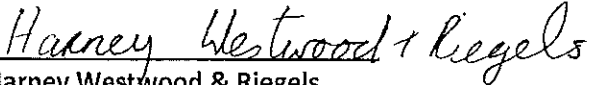
TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman on 28 July 2015 at 10:00 am/pm.

Any correspondence or communication with the Court relating to the hearing of this Petition should be addressed to the Registrar of the Financial Services Division of the Grand Court at PO Box 495, Grand Cayman, KY1-1106, telephone 345 949 4296.

8. The JOLs do file with the Clerk of the Court a report in writing detailing the present position and progress made to date with the winding up of the Company with the realisation of the assets thereof and to any other matters connected to the winding up of the Company, as the Court may direct.
9. The JOLs be at liberty to appoint counsel, attorneys, and/or any other professional advisors, whether in the Cayman Islands or elsewhere as they may consider necessary to advise and assist them in the performance of their duties and on such terms as they may think fit and to remunerate them out of the assets of the Company.
10. The JOLs and their staff be remunerated out of the assets of the Company in accordance with Part III of the Insolvency Practitioners Regulations 2009 (as amended).
11. The JOLs be at liberty to apply generally.
12. The costs of the Petition and the Petitioner be paid out of the assets of the Company on an indemnity basis.
13. Such further or other relief as the Court deems appropriate.

Dated the 5th day of May 2015

Filed the        day of May 2015

  
**Harney Westwood & Riegels**  
Attorneys-at-Law for the Petitioner

NOTE: It is intended to serve this Petition upon:

1. The Registrar
2. Devi Limited, at its registered office

THIS PETITION is filed by Harney Westwood & Riegels, Attorneys-at-Law for the Petitioner, whose address for service is 4th Floor, Harbour Place, 103 South Church Street, PO Box 10240, Grand Cayman KY1-1002, Cayman Islands (Ref: MYK.GMK 046820.0001