

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
RSC 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, c. 57, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF
GREAT PANTHER MINING LIMITED

**ORDER MADE AFTER APPLICATION
(Lifting Stay of Proceedings)**

BEFORE))
) THE HONOURABLE) December 16, 2022
) MR. JUSTICE P.W. WALKER)
))

ON THE APPLICATION of Asahi Refining Canada Limited (“**Asahi**”), coming on for hearing at the Law Courts, 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia on December 16, 2022 (the “**Order Date**”); **AND ON READING** the first report of Alvaez & Marsal Canada Inc. dated October 3, 2022, the Affidavit of Suzanne Volkow sworn on October 3, 2022, and the Second Affidavit of Paul Healey sworn on October 18, 2022 (Redacted First Affidavit of Paul Healey sworn October 12, 2022); **AND ON HEARING** William E.J. Skelly, counsel for Asahi, and those other counsel listed in **Appendix “A”** hereto; **AND PURSUANT TO** the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, the British Columbia Supreme Court Civil Rules, and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

Service

1. The time for service of the Notice of Application and the supporting materials in respect thereof is hereby abridged and validated so that the Notice of Application is properly returnable on the Order Date, and further service on the Service List is hereby dispensed with.

Lifting Stay of Proceedings

2. The Stay of Proceedings, as defined at paragraph 11 of the Initial Order granted on October 4, 2022 in these proceedings (the “**CCAA Proceedings**”) is hereby lifted for the purpose of filing the petition attached hereto as Appendix “B” (the “**Petition**”) for a bankruptcy Order in respect of Great Panther pursuant to s.42 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.

Restriction on Payments

3. Great Panther Mining Limited (“**Great Panther**”) is hereby enjoined from making any of the following payments during the pendency of these CCAA Proceedings, or until further order of this Honourable Court:
 - a. payment to a creditor which exceeds \$5,000.00, without first obtaining the written approval from Alvarez & Marshal Inc. in its capacity as the Court-appointed Monitor in these CCAA Proceedings (“**Monitor**”) and provided any such payment is consistent with the objective of conserving cash;
 - b. payment to any directors or officers of GPM;
 - c. payment in respect of severance for any employees of Great Panther; and

- d. payment to non-arms length and related parties, as defined pursuant to s.251(2) of the *Income Tax Act*, RSC 1985, c 1 (5th supp).

Endorsement

4. Endorsement of this Order by counsel appearing on this application, other than counsel for Asahi, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER:

Signature of William E. J. Skelly
Lawyer for applicant, Asahi Refining Canada Limited

BY THE COURT:

REGISTRAR

APPENDIX “A”

List of Counsel

Name of Counsel	Party Represented
David Bish (Torys LLP)	Counsel for the Directors of Great Panther Mining Limited
Lance Williams (McCarthy Tétrault LLP)	Counsel for Great Panther Mining Limited
Kibben Jackson and Rebecca Barclay Nguinambaye (Fasken Martineau DuMoulin LLP)	Proposal Monitor and Proposed Trustee

APPENDIX “B”

District of British Columbia
Division No. 3 - Vancouver
Court No. B-_____

IN THE SUPREME COURT OF BRITISH COLUMBIA IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
RSC 1985, c. B-3, AS AMENDED

AND

IN THE MATTER OF THE BANKRUPTCY OF GREAT PANTHER MINING LIMITED

PETITION TO THE COURT

NAME OF PETITIONER: Asahi Refining Canada Limited

ON NOTICE TO: Those parties set out in **Schedule “A”** attached hereof.

This proceeding has been started by the Petitioner for the relief set out in Part 1 below.

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the Petitioner
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claims, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time For Response To Petition

A response to petition must be filed and served on the Petitioner,

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,

- (c) if you were served with the petition anywhere else, within 49 days after that service,
or
(d) if the time for response has been set by order of the court, within that time.
- (1) The address of the registry is:

The Law Courts, 800 Smithe Street, Vancouver, BC V6Z 2E1

- (2) The ADDRESS FOR SERVICE of the Petitioner is:

c/o MLT AIKINS LLP
Barristers and Solicitors
Suite 2600, 1066 West Hastings Street
Vancouver, BC V6E 3X1
Attention: William E.J. Skelly

Fax number for service of the Petitioner: (604) 682-7737

Email address for service of the Petitioner: wskelly@mltaikins.com

- (3) The name and office address of the Petitioner's lawyer is:

Same as address for service.

CLAIM OF THE PETITIONER

Part 1: ORDERS SOUGHT

5. The Petitioner, Asahi Refining Canada Limited ("**Asahi**") seeks an order substantially in the form of order attached as **Schedule "B"** hereto (the "**Bankruptcy Order**") for certain relief as follows:
- a. the granting of an order abridging the time for service of this Petition and the Petition Record and dispensing with further service thereof;
 - b. a declaration that Great Panther Mining Limited ("**GPM**") is a corporation to which the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the "**BIA**") applies;
 - c. the granting of bankruptcy order in respect of GPM pursuant to s.42 of the *BIA*, including the appointment of Alvarez & Marsal Canada Inc. ("**A&M**") as the trustee in bankruptcy of GPM, or such other trustee as this Honourable Court deems fit;
 - d. such further relief as the circumstances may require and as this Honourable Court

deems appropriate.

6. The Petitioner, Asahi, also seeks an order substantially in the form of order attached as **Schedule “C”** hereto (the “**Sealing Order**”) for certain relief as follows:
 - a. the granting of a sealing order in respect of the Second Affidavit of Ikuya Hirabayashi, sworn on October 21, 2022 (the “**Second Affidavit**”);
 - b. such further relief as the circumstances may require and as this Honourable Court deems appropriate.

Part 2: FACTUAL BASIS

Overview

7. All capitalized terms used in this Petition to the Court, unless otherwise noted, have the meanings ascribed to them in the first Affidavit of Ikuya Hirabayashi, sworn on December 14, 2022 (the “**Hirabayashi Affidavit**”).

The Parties

8. Asahi is a Canadian federal corporation and wholly owned subsidiary of Asahi Holdings Inc., a corporation registered in the country of Japan.

Hirabayashi Affidavit at para 3.

9. GPM is a corporation continued into British Columbia with a registered and records office at 1330 – 200 Granville Street, Vancouver, British Columbia V6C 1S4. GPM is in good standing with the corporate registry.

- a. First Report of Alvarez & Marsal Inc. dated October 3, 2022, in CCAA Estate 11-2862600
- b. (“**A&M First Report**”) at para 4.1.

Summary of GPM’s Operations

10. GPM is the Canadian parent company of 18 wholly owned operating and non-operating mining subsidiaries in Canada, Australia, the British Virgin Islands, Brazil, Mexico, and Peru.

- c. A&M First Report at Appendix C.

11. GPM is engaged in the business of mining and processing gold, silver, copper, lead, and zinc operations (“**Mined Ore**”) from three mines, being:
- (a) the Tucano mine located in Brazil, which produces gold doré bars (the “**Tucano Mine**”);
 - (b) the Topia and Guanajuato mines located in Mexico; and
 - (c) the Coricancha mine and processing facility located in Peru.
- d. A&M First Report at para 4.2.
12. GPM also attends to the shipment logistics, marketing, and selling of the Mined Ore.
- e. Hirabayashi Affidavit at para 16.
13. The gold doré produced at the Tucano Mine is roughly refined onsite into gold doré bars containing levels of purity insufficient for sale into gold markets. The gold doré bars are therefore refined into fine gold offsite. Asahi was asked by GPM to perform the final offsite refinement and, using its connections in the mined ore markets, sell the resulting fine gold for GPM.
- f. Hirabayashi Affidavit at para 17.

Contractual Relationship Regarding the Tucano Mine

14. On July 1, 2019, GPM and Asahi entered into a refining agreement with GPM (the “**Refining Agreement**”), pursuant to which, *inter alia*, GPM agreed to sell to Asahi all of the gold doré produced from the Tucano Mine.
- g. Hirabayashi Affidavit at para 17.
15. However, GPM needed working capital and agreed to enter into a prepaid gold agreement with Samsung C&T U.K. Ltd. (“**Samsung**”). Asahi permitted 40% of the gold which would normally have come to it under the Refining Agreement to be sent to the refiner for Samsung, to be refined and to repay that loan. This transaction led to the first two amendments to the Refining Agreement. Asahi was not given any notice of this gold presale arrangement with Samsung when it was signed and was not given a great deal of time to respond when it was. However, Asahi did ultimately support GPM.
- h. Hirabayashi Affidavit at para 18.
16. GPM continued to require liquidity and asked Asahi to enter into a prepaid gold agreement

in May of 2021. Asahi agreed and this led to the signing of the Gold Prepayment Agreement between GPM, Asahi, and Mina Tucano dated September 20, 2021 (the “**Gold Prepayment Agreement**”).

i. Hirabayashi Affidavit at para 19.

17. Upon entering the Gold Prepayment Agreement, Asahi advanced the Asahi Loan (being USD\$20,000,000) to GPM which amounts were repayable in twelve (12) equal instalments of gold or cash, starting in April of 2022. The Refining Agreement was also amended to reflect this transaction and Asahi was thereafter entitled to receive 100% of the product of Tucano Mine.

j. Hirabayashi Affidavit at para 20.

18. All transactions under the Refining Agreement after the signing of the Gold Prepayment Agreement and the third amendment to the Refining Agreement were conducted in the following manner:

- (a) Mina Tucano produced gold doré bars and shipped them to Sao Paulo, Brazil where the Brazilian affiliate of the Brinks organization received them into its warehouse;
- (b) Mina Tucano provided a preliminary assay of the gold content of the gold doré bars to Asahi and GPM;
- (c) GPM advanced funds to Mina Tucano for the gold doré bars, less a 3% marketing fee;
- (d) the gold was then airfreighted to Toronto, Ontario, and then sent to Asahi’s facility in Brampton, Ontario for refining; and
- (e) once Asahi completed the refining and its own assay of the gold, Asahi would pay GPM for the refined gold, less any applicable treatment fees, provided however that GPM had not sought prepayment for the gold pursuant to the terms of the Gold Prepayment Agreement.

k. Hirabayashi Affidavit at para 23.

Defaults by GPM under the Gold Prepayment Agreement

19. In October of 2021, one month after the advance under the Gold Prepayment Agreement, GPM advised Asahi that it was experiencing production problems at the Tucano Mine but

all was well. The management discussion and analysis accompanying GPM's third quarter financial statements for 2021 (reviewed by Asahi in November of 2021) referenced production problems but, the then President and CEO of GPM, Rob Henderson, is quoted as saying, "We expect to navigate through these challenging times in order to realize the full potential of the Tucano mine while optimizing and improving operations as we head into 2022".

l. Hirabayashi Affidavit at para 24.

20. On December 10, 2021, GPM approached Asahi to extend the repayment period under the Gold Prepayment Agreement and, perhaps, increase the amount of the loan facility available by USD\$15,000,000. Cash flows were sent and revised.

m. Hirabayashi Affidavit at para 25.

21. Meanwhile, Asahi engaged the services of Dale Sketchley, who is a respected geological expert with experience in ore deposits at advanced mining operations, to review GPM's technical reports in an effort to understand the problems at Tucano Mine.

n. Hirabayashi Affidavit at para 26.

22. On December 15, 2021, GPM contacted Asahi to advise of "some inconsistencies between our latest information related to underground production in the model [that GPM sent]" and would be providing "the correct information as soon as possible".

o. Hirabayashi Affidavit at para 27.

23. On December 22, 2021 GPM circulated a revised cash flow model to Asahi in support of their previous request for the USD\$15,000,000 increase to the Asahi Loan facility and extension of the payment terms in the Gold Prepayment Agreement.

p. Hirabayashi Affidavit at para 28.

24. David Garofalo, the then Chairman of the Board of Directors of GPM, resigned in December of 2021 and Rob Henderson, the then President and CEO of GPM, resigned in February of 2022. Meanwhile, Asahi and GPM were attempting to negotiate an extension of the payment obligations and potentially a new advance under the Gold Prepayment Agreement. Many efforts were made by GPM to address what Asahi perceived were increasing risks. Installment payments were made by GPM to Asahi in April, May, June, and July of 2022 by way of set-off from the delivery of gold shipments as outlined above.

q. Hirabayashi Affidavit at para 29.

25. After encouraging news on the Tucano Mine from GPM and the final report from Mr. Sketchley, Asahi offered to advance a further USD\$10 million under the Gold Prepayment Agreement on the condition that GPM raise USD\$5 million in equity and pledging certain shares GPM held in Guanajuato Silver Company Ltd. (“**G-Silver**”), a publicly traded company which carries on mining operations in Mexico (collectively, the “**G Silver Shares**”). The Mexican mine was previously owned by GPM before it was sold to G-Silver in August of 2022.

r. Hirabayashi Affidavit at para 30.

26. Further discussions were requested with GPM’s advisors with respect to the equity raise and with GPM’s Chief Operating Office, Ferando Cornejo (“**Fernando**”) regarding, among other things, the much increased production forecast received from GPM. A call took place on or about August 23, 2022 during which Fernando, who was responsible for advising whether GPM’s models could be supported, appeared confused as to which model Asahi was relying on and, when Asahi questioned Fernando on GPM’s ability to execute on their financial and operational model, Fernando undertook to get back to Asahi but never did, rather (as further detailed below), Ms. Daycock provided Asahi with a revised “Model”.

s. Hirabayashi Affidavit at para 31.

27. This model provided by Ms. Daycock was a cash flow based upon many factors including the cost of operating the Tucano Mining, the anticipated price of gold, the anticipated concentration of gold in the mined rock and the amount of rock anticipated to be mined in a period.

t. Hirabayashi Affidavit at para 32.

28. On August 24, 2022, GPM reverted with a revised model that showed a significant shortfall in Mined Ore production owing to various issues at the Tucano Mine. On August 25, 2022, GPM further advised that their modeling now showed a real liquidity risk in November of 2022, resulting in GPM not being likely to have a successful equity raise.

u. Hirabayashi Affidavit at para 33.

29. On August 25, 2022, Asahi received emails from GPM enclosing a revised cash flow and advising for the first time that GPM was in grave financial difficulty. This information was remarkably different than the information provided by GPM to Asahi on August 23, 2022.
- v. Hirabayashi Affidavit at para 34.
30. On August 30, 2022, GPM sent Asahi two emails pursuant to which GPM, inter alia, requested that Asahi process a gold shipment then located in Ontario, and not deduct the August payments owing under the Gold Prepurchase Agreement or otherwise exert set-off rights.
- w. Hirabayashi Affidavit at para 37.
31. Asahi refused GPM's request, but offered to try to work with GPM. When the gold shipment was not released to Asahi in time for the August installment to be paid, Asahi sent a notice of default under the Gold Prepayment Agreement to GPM via email on September 1, 2022, noting that the scheduled payment was due and payable on August 31, 2022 and had not been received.
- x. Hirabayashi Affidavit at para 38.
32. GPM subsequently filed and commenced its NOI Proceedings, as defined herein, on the Filing Date, the day on which its cure period ended under the Gold Prepurchase Agreement, without notice to Asahi. GPM also initiated insolvency proceedings in Brazil and in the United States without informing Asahi.
- y. Hirabayashi Affidavit at para 39.

Post-Filing Amendment to Refining Agreement

33. Following the Filing Date, GPM continued to need the Tucano Mine's gold doré bars refined and sold. At that time, GPM asked Asahi to consider doing so. Asahi received GPM's representation from Ms. Daycock that the Tucano Mine had mined gold doré in excess of 12,000 ounces on the ground, the proceeds of which it proposed to use to fund a sale process for the Tucano Mine.
- z. Hirabayashi Affidavit at para 40.

34. It was also GPM's plan to have Mina Tucano continue mining Tucano Mine if an agreement could be reached with its contractors that carry out the mining operations in Brazil.

aa. Hirabayashi Affidavit at para 41.

35. Negotiations occurred between Asahi and GPM, and the parties agreed to, among other things, continue to provide refining services and allow Asahi a limited set-off against forthcoming gold shipments of 1.5% (as opposed to the previously agreed 5%). The agreement was documented by way of an amending letter to the Refining Agreement, dated September 23, 2022, between GPM and Asahi (the "**Refining Agreement Amendment No. 4**") which was approved by this Court pursuant to the Initial Order, as defined herein.

bb. Hirabayashi Affidavit at para 42.

36. Subsequent to the execution of Refining Agreement Amendment No. 4, Ms. Daycock revealed that there were only 4,500 ounces of gold doré available to be refined. This was a significant decrease to what was presented to Asahi during negotiations, and may have changed Asahi's course of action, given it had largely relied upon representation that 12,000 ounces of gold doré would be available for refining in deciding to enter into Refining Agreement Amendment No. 4.

cc. Hirabayashi Affidavit at para 43.

37. GPM was and continues to be unable to produce enough gold doré from the Tucano Mine to satisfy the terms of the Gold Prepayment Agreement. The Defaults remain outstanding. Asahi, as the majority fulcrum creditor of GPM, suffers the greatest risk in respect of GPM's attempt to formally restructure.

GPM Formal Insolvency Proceedings

38. As noted above, on September 6, 2022, GPM filed its NOI as a result of liquidity issues arising from ongoing operational challenges, a volatile foreign exchange market affecting currency hedge, increased expenditures and project delays. Alvarez & Marsal Canada Inc. consented to act as trustee in GPM's NOI proceedings (the "**NOI Proceedings**").

39. On October 4, 2022, the Supreme Court of British Columbia (the "**Honourable Court**") made an Order pursuant to section 11.02(1) of the CCAA (the "**Initial Order**"), granting

GPM protection under the CCAA. A&M was appointed as Monitor (the “**Monitor**”).

40. The Initial Order granted GPM a subsequent hearing on October 14, 2022 at 9 a.m. (the “**Comeback Hearing**”) for the purpose of, *inter alia*, hearing GPM’s application to extend the stay of proceedings granted under the CCAA (the “**Stay**”).
41. Asahi brought a cross-application in the Comeback Hearing for an order lifting the Stay for the purpose of filing this Petition in order to petition GPM into bankruptcy (the “**Stay Lift Order**”).
42. On October 14, 2022, the Stay was extended to October 21, 2022 (the “**Second Comeback Hearing**”) in order to allow the parties additional time to address the Court’s concerns regarding, *inter alia*, the reliability of the valuations produced by GPM to A&M and Royal Bank of Canada, and to address concerns of prejudice to certain stakeholders of GPM. At the Comeback Hearing, it was also agreed to by all parties that, if the Stay Lift Order was granted at the Second Comeback Hearing, the Second Comeback Hearing would be adjourned to allow Asahi to file this Petition with this Honourable Court so that the hearing of this Petition could commence immediately thereafter.

Further Particulars

43. Asahi is the majority fulcrum creditor of GPM. As at October 21, 2022, GPM is indebted to Asahi under the Asahi Loan in the approximate amount of USD\$13,000,000 (approximately CDN\$18,300,000), excluding costs and interest that continue to accrue, and which remain unpaid. GPM’s debt obligation to Asahi represents approximately 95% of GPM’s total indebtedness.

dd. Hirabayashi Affidavit at para 10.

44. Asahi is of the view that GPM should be petitioned into bankruptcy for the following reasons:
 - a. GPM owes Asahi over one thousand dollars in debts;
 - b. GPM is an insolvent person within the meaning of the BIA;
 - c. GPM previously admitted that it is an insolvent person within the meaning of the BIA when it filed the NOI; and

- d. GPM has committed an act of bankruptcy pursuant to subsection 42(1)(j) of the BIA as GPM has ceased to meet its liabilities generally as they become due.
45. The Second Affidavit contains commercially sensitive information regarding GPM. Accordingly, Asahi proposes to seal the Second Affidavit until further order of this Honourable Court.

ee.

Part 3: LEGAL BASIS

46. The Petitioner relies on:
- (a) *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;
 - (b) *Supreme Court Civil Rules*, in particular Rules 2-1(2), 16-1, 22-1, and 22-4;
 - (c) the inherent jurisdiction of this Honourable Court; and
 - (d) such further and other legal basis as counsel may advise and this Honourable Court may allow.

Bankruptcy Orders Under the BIA

47. This Court's authority to grant a bankruptcy order is derived from the following statutory provisions:
- (a) **Section 43(1) of the *BIA***, which provides:

43(1) Subject to this section, one or more creditors may file in court an application for a bankruptcy order against a debtor if it is alleged in the application that:

 - (a) *the debt or debts owing to the applicant creditor or creditors amount to one thousand dollars; and*
 - (b) *the debtor has committed an act of bankruptcy within the six months preceding the filing of the application.*
 - (b) **Section 42(1) of the *BIA***, which provides:

42(1) A debtor commits an act of bankruptcy in each of the following cases:

...

 - (f) *if he exhibits to any meeting of his creditors any statement of his assets and liabilities that shows that he is insolvent, or presents or causes to be presented to any such meeting a written admission of his inability to pay his debts;*

(h) *if he gives notice to any of his creditors that he has suspended or that he is about to suspend payment of his debts; and*

(j) *if he ceases to meet his liabilities generally as they become due.*

(c) **Section 2 of the *BIA***, which provides:

2 insolvent person means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

(a) *who is for any reason unable to meet his obligations as they generally become due,*

(b) *who has ceased paying his current obligations in the ordinary course of business as they generally become due, or*

(c) *the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due;*

(d) **Section 50.4 of the *BIA***, which provides:

50.4 (1) *Before filing a copy of a proposal with a licensed trustee, an insolvent person may file a notice of intention, in the prescribed form, with the official receiver in the insolvent person's locality, stating*

(a) *the insolvent person's intention to make a proposal,*

(b) *the name and address of the licensed trustee who has consented, in writing, to act as the trustee under the proposal, and*

(c) *the names of the creditors with claims amounting to two hundred and fifty dollars or more and the amounts of their claims as known or shown by the debtor's books,*

and attaching thereto a copy of the consent referred to in paragraph (b).

48. Once a creditor has established the technical requirements of s.42 of the BIA, the onus falls to the debtor to satisfy a court as to why it should exercise its discretion not to grant a bankruptcy order. This was confirmed by Mr. Justice Farley of the Ontario Superior Court of Justice in *Ivaco Inc., Re*, as follows:

“... Once a creditor has established the technical requirements of s. 42 of the BIA for granting a bankruptcy order and the debtor is unable to show why a bankruptcy order ought not to be granted, a bankruptcy order should be made. A court has the discretion to refuse such an order pursuant to s. 43(7) with the onus being on the debtor to show sufficient cause why the order ought not to be granted.” [citations omitted]

Ivaco Inc., Re (2005), 12 C.B.R. (5th) 213, at para. 13 (Ont. S.C.J. [Commercial List]).

49. A single creditor may petition a debtor into bankruptcy pursuant to s. 42(1)(j) of the BIA where it meets one of the following criteria:

- (a) where repeated demands for payment of the debt have been made within a six-month period by the sole creditor of the debtor;
- (b) where the debt is significantly large and there is fraud or suspicious circumstances in the way the debtor has handled its assets which require that the processes of the BIA be set in motion; or
- (c) where, prior to the filing of the petition, the debtor has admitted its inability to pay creditors generally without identifying the creditors.

Homes, Re, 1975 CarswellOnt 83 at paras 5-8.

Lafarge Canada Inc. v. Smith, 2014 ABQB 275 at para 39.

Solid Holdings Ltd. (Re), 2019 BCSC 126 (“**Solid Holdings**”) at para 15, aff’d 2019 BCCA 231.

50. Accordingly, a debt to a single creditor can be sufficient to constitute an act of bankruptcy where there are special circumstances.

Solid Holdings at para 15.

51. Where there is only one petitioning creditor, a court should be vigilant to ensure that the petition is not being brought for the purpose of compelling a disputed claim.

Stancroft Trust Ltd. v. Asiamerica Capital Ltd. (1992), 1992 CanLII 1091 (BC CA), 72 B.C.L.R. (2d) 353 (C.A.) (“**Stancroft**”) at para 12.

52. If a debtor cannot satisfy a court that either it can pay its debts pursuant to s.43(7) of the BIA, or that there is sufficient reason not to grant a bankruptcy order pursuant to s.43(11) of the BIA, then a court should grant the bankruptcy order.

Stancroft at para 10.

Sealing Orders

53. Pursuant to Part 6, Division 4 of the Alberta Rules of Court, AR 124/2010, this Honourable Court is empowered to partially seal a court file on application.

54. In *Sierra Club of Canada v Canada* (Minister of Finance), the Supreme Court of Canada

held that a sealing order where the applicant demonstrates that:

- a. the order sought is necessary to prevent the identified risk because reasonably alternative measures will not prevent the risk; and
- b. the benefits of the order outweigh its negative effects, including the effects on the right to free expression, which includes the public interest in open and accessible court proceedings.

Sierra Club of Canada v Canada (Minister of Finance), 2002 SCC 41 at para 40.

55. In *Sherman Estate v Donovan*, the Supreme Court of Canada recently confirmed the Sierra Club test and clarified the core considerations in an application for a sealing order:

- a. Court openness poses a serious risk to an important public interest;
- b. The order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- c. The benefits of the order restricting openness of the courts outweigh its negative effects.

Sherman Estate v Donovan, 2021 SCC 25 at para 38.

56. Canadian courts have routinely recognized the importance of protecting the highly sensitive commercial information that is shared in the context of the harmful effects on a restructuring company that could arise if the information were to become publicly available.

Yukon (Government of) v Yukon Zinc Corporation, 2022 YKSC 2 at para 39.

American Iron v 1340923 Ontario, 2018 ONSC 2810 at para 47.

Application of Law to Facts

57. Asahi meets the criteria established pursuant to s.43 of the BIA.

58. Great Panther has expressly admitted that it is insolvent in its evidence filed in the CCAA Proceedings. It has also admitted insolvency by availing itself of the NOI Proceedings and the CCAA Proceedings.

59. Great Panther's admissions of insolvency dispenses with the conventional expectation that more than one creditor support an application for a bankruptcy order pursuant to s.43 of

the BIA.

60. Further, the debt owed to Asahi is significant, totalling approximately USD\$13,000,000 as at October 21, 2022. GPM does not appear to dispute liability or quantum in respect of its debt to Asahi.
61. It is appropriate to seal the Second Affidavit as it contains commercially sensitive information regarding GPM.

Conclusion

62. Based on the foregoing, Asahi respectfully submits that it appropriate for this Honourable Court to grant the following relief:
 - a. an order abridging the time for service of this Petition and the Petition Record and dispensing with further service thereof;
 - b. a declaration that GPM is a corporation to which the BIA applies;
 - c. a bankruptcy order in respect of GPM pursuant to s.42 of the *BIA*, including the appointment of A&M as the trustee in bankruptcy of GPM; and
 - d. an order sealing the Second Affidavit.

Part 4: MATERIAL TO BE RELIED ON

63. This Petition.
64. First Affidavit of Ikayu Hirabayashi, sworn on December 14, 2022.
65. Second Affidavit of Ikayu Hirabayashi, sworn on October 21, 2022, being the Second Affidavit.
66. A&M's first report to this Honourable Court in its capacity as the Proposal Trustee of GPM, dated October 3, 2022 and filed in the CCAA Proceedings.
67. A&M's first report to this Honourable Court in its capacity as the Monitor of GPM, dated

October 13, 2022 and filed in the CCAA Proceedings.

68. Consent of A&M to act as Trustee in Bankruptcy.
69. Such further materials as may be filed with this Honourable Court.

The Petitioner estimates that the hearing of the petition will take **one (1) day**.

Dated: December 16, 2022

Signature of William E.J. Skelly
Lawyer for Asahi Refining Canada Limited

<i>To be completed by the court only:</i>	
Order made	
[]	in the terms requested in paragraphs of Part 1 of this notice of application
[]	with the following variations and additional terms:
Date:
	Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE
OUTSIDE BRITISH COLUMBIA**

The Petitioner claims to serve this pleading/petition on the respondents outside of British Columbia on the grounds that the proceeding is brought to enforce, assert, declare, or determine proprietary or possessory rights or a security interest in property in British Columbia, pursuant to Rule 4-5(1) and s. 10(a) of the *Court Jurisdiction and Proceedings Transfer Act*.

**SCHEDULE “A”
(to the Petition)**

Service List

Name of Counsel	Party Represented
William E.J. Skelly (MLT Aikins LLP) Kyle B. Plunkett LSO #61044N (Aird & Berlis LLP)	Counsel for Asahi Refining Canada Limited
Lance Williams (McCarthy Tétrault LLP)	Counsel for Great Panther Mining Limited
Kibben Jackson and Rebecca Barclay Nguinambaye (Fasken Martineau DuMoulin LLP)	Proposal Monitor and Proposed Trustee
David Bish (Torys LLP)	Counsel for the Directors of Great Panther Mining Limited

**SCHEDULE “B”
(to the Petition)**

Proposed Form of Bankruptcy Order