

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and -

**AHM TRANSPORT INC., AISHKA EXPRESS 2016 INC., AISHKA EXPRESS INC.,
AISHKA RECYCLING INC. and TANUSH TRANSPORT INC.**

Respondent

**APPLICATION UNDER SUBSECTIONS 47(1) AND 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

FACTUM OF THE APPLICANT

August 16, 2024

AIRD & BERLIS LLP
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Sanjeev P.R. Mitra (LSO # 37934U)
Tel: (416) 865-3085
Fax: (416) 863-1515
Email: smitra@airdberlis.com

Adrienne Ho (LSO # 68439N)
Tel: (416) 637-7980
Fax: (416) 863-1515
Email: aho@airdberlis.com

Lawyers for Royal Bank of Canada.

PART I – OVERVIEW

1. AHM Transport Inc. (“**AHM**”), Aishka Express 2016 Inc. (“**Aishka 2016**”), Aishka Express Inc. (“**Aishka**”), Aishka Recycling Inc. (“**Aishka Recycling**”) and Tanush Transport Inc. (“**Tanush**”, and together with AHM, Aishka 2016, Aishka, Aishka Recycling, the “**Debtors**”) has been in default under various facilities with Royal Bank of Canada (“**RBC**”).
2. The Bank has issued demands and Notices of Intention to Enforce Security pursuant to section 244 of the *Bankruptcy and Insolvency Act* (the “**BIA**”). The Debtors owe RBC in excess of \$8 million and have failed to repay the outstanding debt.
3. Accordingly, the Bank seeks to enforce its security and appoint msi Spergel Inc. (“**Spergel**”) as receiver of the Debtors’ assets, properties and undertakings (collectively, the “**Property**”).
4. In the circumstances, it is just and convenient to appoint Spergel as receiver.

PART II – FACTS

a) Background

5. Each of the Debtors are registered under Ontario’s *Business Corporations Act* with a registered head office in Vaughan or Woodbridge, Ontario.¹ Thushitha Puvanenthiran (“Puvanenthiran”) is listed as a director of AHM and Aishka. Puvanenthiran Jeyabalasingam (“**Jeyabalasingam**”) is listed as a director of Aishka 2016 and Tanush. Thusitha Puvanenthiran is listed as a director of Aishka. Jeyabalasingam Puvanenthiran is listed as a director of Aishka Recycling.²

¹ Affidavit of Jan Oros sworn August 9, 2024, Application Record of the Royal Bank of Canada dated August 9, 2024, Tab 2 (“**Oros Affidavit**”).

² Oros Affidavit at para 3.

6. Each of the Debtors are indebted to RBC in connection with various credit and visa facilities. RBC had also extended leasing facilities to Aishka and Aishka 2016.³
7. To secure the Debtors' obligations to RBC, the Bank obtained various security (collectively, the "**Security**"), which includes:
 - (a) General security agreements (the "**GSAs**") executed by each of the Debtors, registration in respect of which was made under the *Personal Property Security Act* (Ontario) (the "**PPSA**");⁴
 - (b) In respect of AHM's obligations, guarantees and postponements of claim, each limited to the amount of \$475,000, from Aishka, Jeyabalasingam, Tanush and Puvanenthrian;⁵
 - (c) In respect of Aishka 2016's obligations, the following guarantees:
 - (i) A guarantee and postponement of claim from Aishka Recycling limited to the principal amount of \$1,508,935; and
 - (ii) A guarantee and postponement of claim from Jeyabalasingam limited to the principal amount of \$1,508,000;⁶
 - (d) In respect of Aishka's obligations to RBC, guarantees and postponements of claim, each limited to the amount of \$4,140,000, from AHM, Jeyabalasingam, Tanush and Puvanenthrian;⁷
 - (e) In respect of Aishka Recycling's obligations to RBC, the following guarantees:⁸

³ Oros Affidavit at para 4 and Exhibits "B", "C", "D", "E", "F" "G" and "H".

⁴ Oros Affidavit at para 5 and Exhibit "I".

⁵ Oros Affidavit at para 5(b) and Exhibit "J".

⁶ Oros Affidavit at para 5(c) and Exhibit "K".

⁷ Oros Affidavit at para 5(d) and Exhibit "L".

⁸ Oros Affidavit at para 5(e) and Exhibit "M".

- (i) A guarantee and postponement of claim from Aishka 2016 limited to the principal amount of \$650,000 dated August 30, 2023; and
 - (ii) A guarantee and postponement of claim from Jeyabalasingam limited to the principal amount of \$600,000 dated October 17, 2022; and
 - (f) In respect of Tanush's obligations to RBC, guarantees and postponements of claim, each limited to the amount of \$3,125,000, from AHM, Aishka, and Jeyabalsingam.⁹
8. RBC reserves the right to pursue each of the Debtors in their capacity as guarantors, in respect of the guarantees executed by them, as described above (collectively the "**Guarantees**"), including for any interest accruing from the date of the Initial Demand Letters (as defined below).¹⁰

b) Other Secured Creditors

9. Based on PPSA searches, as of August 6, 2024, RBC is the first registrant against all collateral classifications other than consumer goods with respect to Aishka Recycling, Aishka 2016, and AHM.¹¹
10. The PPSA search results indicate that various other parties have also registered under the PPSA against the Debtors.¹²
11. In particular, with respect to Aishka, the Business Development Bank of Canada ("**BDC**") has an all collateral registration other than Consumer Goods. RBC has a priority agreement

⁹ Oros Affidavit at para 5(f) and Exhibit "N".

¹⁰ Oros Affidavit at para 6.

¹¹ Oros Affidavit at para 12.

¹² Oros Affidavit at para 13.

with BDC.¹³ The agreement, in substance gives RBC priority over accounts and inventory and gives BDC priority over certain equipment of Aishka.¹⁴

12. Further, one of RBC's existing registrations against Aishka had expired on May 15, 2023. RBC subsequently made a new PPSA registration on May 13, 2024.¹⁵ Between the expiration of one of RBC's existing registration and RBC's new registration, the only party that made a registration against the collateral classification of "Accounts" is 11302078 Canada Ltd. O/A Sheaves Capital.¹⁶

c) The Demands

13. On May 17, 2024, RBC proceeded to make a formal written demand on the Debtors and the Guarantors, as applicable, for payment of the amounts owed to RBC under the various credit and visa facilities described above as well as the Guarantees (collectively, the "**Initial Demand Letters**"). Notices of intention to enforce security (the "**BIA Notices**") pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada) accompanied the Initial Demand Letters sent to the AHM, Tanush, and Aishka Recycling.¹⁷
14. On May 31, 2024, RBC proceeded to make a formal written demand on Aishka 2016 and Aishka for amounts owed under the leasing facilities (the "**Leasing Demands**"). BIA Notices also accompanied the Leasing Demands sent to Aishka 2016 and Aishka. BIA Notices were also sent to AHM and Tanush.¹⁸

¹³ Oros Affidavit at para 12 and Exhibit "T".

¹⁴ Oros Affidavit at para 14.

¹⁵ Oros Affidavit at para 15 and Exhibit "U".

¹⁶ Oros Affidavit at para 15.

¹⁷ Oros Affidavit at para 16 and Exhibit "V".

¹⁸ Oros Affidavit at para 17 and Exhibit "W".

15. The following amounts are owing by the Debtors to RBC for principal and interest (together with costs (including, without limitation, legal fees and expenses) and accruing interest, the “**Indebtedness**”):

- (i) \$280,383.80 owed pursuant to credit and visa facilities granted to AHM by RBC, including an overdrawn bank account in the amount of \$3,977.54 as of July 30, 2024;
- (ii) \$1,102,630.46 owed pursuant to credit and visa facilities granted to Aishka 2016 by RBC as of July 30, 2024;
- (iii) \$188,316.71 owed pursuant to leasing facilities granted to Aishka 2016 by RBC as of July 29, 2024;
- (iv) \$813,042.74 owed pursuant to leasing facilities granted to Aishka by RBC as of July 29, 2024;
- (v) \$3,290,226.82 owed pursuant to credit and visa facilities granted to Aishka by RBC, including an overdrawn bank account in the amount of \$28,015.47 as of July 30, 2024;
- (vi) \$676,547.55 owed pursuant to credit and visa facilities granted to Aishka Recycling by RBC, including an overdrawn bank account in the amount of \$3,787.10 as of July 30, 2024;
- (vii) \$1,730,498.05 owed pursuant to credit and visa facilities granted to Tanush by RBC as of July 30, 2024.¹⁹

16. Aishka is also indebted to a subsidiary of RBC, RCAP Leasing, in the amount of \$296,103.26 as of July 31, 2024.²⁰

¹⁹ Oros Affidavit at para 18.

²⁰ Oros Affidavit at para 19.

17. The Indebtedness, which exceeds \$8 million, remains unpaid and no arrangements have been made between RBC and the Debtors.²¹

d) Default and Difficulties

18. The Debtors are no longer using the accounts at RBC for their daily banking needs. RBC understands that deposit accounts are being maintained with another financial institution.²²
19. RBC has provided a revolving line of credit to Tanush and Aishka. The amount of credit available to Tanush and Aishka is based on a margin formula contained in the applicable credit agreement which is based on a margin report which includes aged accounts receivables and aged payables. Tanush and Aishka ceased providing margin reports to RBC since March 2024. None of the Debtors have provided year-end statements. At this point, Tanush and Aishka are no longer able to draw on their revolving lines of credit with RBC. Aishka and Tanush have failed to bring down advances under their operating lines to within their authorized credit availability.²³
20. The Debtors have also ceased making payments on their leasing facilities with RBC.²⁴ There is also around \$8,838.56 of arrears to RCAP.²⁵
21. RBC's efforts to attempt to work with the Debtors to address its concerns have been unsuccessful. On or about April 12, 2024, RBC met with Essa Jeya ("Jeya"), during which

²¹ Oros Affidavit at para 20.

²² Oros Affidavit at para 21.

²³ Oros Affidavit at para 22.

²⁴ Oros Affidavit at para 23.

²⁵ Oros Affidavit at para 24.

RBC indicated that an information request and an engagement letter with Spergel would be sent.²⁶

22. On April 29, 2024, Mr. Stephen Small of SSM &S Professional Corporation advised he was engaged by Jeya to provide information. RBC did not receive any information from Mr. Small.²⁷
23. On June 12, 2024, the Debtors engaged counsel and approached RBC to request a forbearance arrangement. In order to consider forbearance, RBC required that an independent financial advisor first be engaged to obtain information about the businesses and affairs of the Debtors. RBC engaged Spergel as a financial advisor with experience in the trucking industry. The Debtor consented to the arrangement and met with representatives of Spergel in June 2024. A preliminary list of information to be provided to Spergel was sent to the Debtors. The Debtors' response to Spergel's initial information request was incomplete and a second follow up request was sent on July 12 and Spergel received no response to that request.²⁸

PART III – ISSUES

24. The issue on this Application is whether Spergel should be appointed as the receiver of the Debtor.

²⁶ Oros Affidavit at para 25.

²⁷ Oros Affidavit at para 26 and Exhibit "Y".

²⁸ Oros Affidavit at para 27 and Exhibit "Z".

PART IV- LAW & ARGUMENT

A. The Court has Jurisdiction to Appoint a Receiver

25. This Court has jurisdiction to appoint a receiver. Subsection 243(1) of the BIA provides that, on application by a secured creditor, a court may appoint a receiver to, *inter alia*, take possession over the assets of an insolvent person and exercise any control that the court deems advisable over that property and over the insolvent person's business, in circumstances where it is "*just or convenient*" to do so.²⁹ Similarly, the CJA enables the court to appoint a receiver where such appointment is "*just or convenient*".³⁰

B. RBC has Complied with Technical Requirements

26. RBC has served the requisite notices pursuant to section 244 of the BIA. The prescribed 10 day notice period has expired. Spergel has consented to act as receiver.³¹
27. Further, courts have recognized that where the secured creditor has enumerated rights to appoint a receiver, the burden on the applicant is relaxed.³² In such cases, the remedy sought is merely the applicant enforcing the terms of an agreement between the parties.³³ RBC has the contractual right to appoint a Receiver. Each of the GSAs executed by the Debtors provide that the non-payment when due of any principal or interest forming part of the debt

²⁹ *Bankruptcy and Insolvency Act (R.S.C., 1985, c. B-3)*, s 243 [*BIA*].

³⁰ *Courts of Justice Act, RSO 1990*, c C. 43 at s 101 [*CJA*].

³¹ Oros Affidavit at para 25 and Exhibit "AA".

³² *Elleway Acquisitions Ltd. v. The Cruise Professionals Ltd.*, 2013 ONSC 6866 at [para 27](#) and *iSpan Systems LP*, 2023 ONSC 6212 at [para 31](#).

³³ *Elleway Acquisitions Ltd. v. The Cruise Professionals Ltd.*, 2013 ONSC 6866 at [para 27](#) and *iSpan Systems LP*, 2023 ONSC 6212 at [para 31](#).

constitutes an Event of Default under the GSA. The GSA provides that RBC can appoint a receiver upon default.³⁴

28. There is a clear event of default. The amount of Indebtedness remains outstanding.³⁵ Accordingly, the appointment of a receiver in this case is not an extraordinary measure, as it is simply the result of enforcing the contractual terms to which the Debtors had already assented to.

C. It is Just and Convenient to Appoint a Receiver

29. In determining whether it is “just or convenient” to appoint a receiver under either the BIA or the CJA, the court can take into account all of the circumstances, such as the costs, preservation of the security, and the relationship between the debtor and its creditors.³⁶
30. As recently summarized by this Court in *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, various factors are historically considered in determining whether a receiver should be appointed. The court laid out these factors as follows:
- (a) whether irreparable harm might be caused if no order is made, although as stated above, it is not essential for a creditor to establish irreparable harm if a receiver is not appointed where the appointment is authorized by the security documentation;

³⁴ Oros Affidavit at para 30 and Exhibit “I”.

³⁵ Oros Affidavit at para 28.

³⁶ *Bank of Nova Scotia v. Freure Village on Clair Creek*, 1996 CanLII 8258 at [para 10](#) and [para 12](#) (ONSC). *Elleway Acquisitions Ltd. v. The Cruise Professionals Ltd.*, 2013 ONSC 6866 at [para 26](#).

- (b) the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of assets while litigation takes place;
- (c) the nature of the property;
- (d) the apprehended or actual waste of the debtor's assets;
- (e) the preservation and protection of the property pending judicial resolution;
- (f) the balance of convenience to the parties;
- (g) the fact that the creditor has a right to appointment under the loan documentation;
- (h) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulties with the debtor;
- (i) the principle that the appointment of a receiver should be granted cautiously;
- (j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties efficiently;
- (k) the effect of the order upon the parties;
- (l) the conduct of the parties;
- (m) the length of time that a receiver may be in place;
- (n) the cost to the parties;
- (o) the likelihood of maximizing return to the parties; and

- (p) the goal of facilitating the duties of the receiver.³⁷
31. It is not essential that the moving party establish, prior to the appointment of a receiver, that:
- (a) It will suffer irreparable harm; or
- (b) That the situation is urgent.³⁸
32. A court-appointed receiver may also be appropriate, where the debtor's past conduct would suggest that efforts by a creditor to privately enforce its security will be delayed or otherwise fail.³⁹
33. As set out below, it is just and convenient in the circumstances to appoint a Receiver.
34. The Indebtedness owing to RBC exceeds \$8 million and continues to accrue. The Debtors have failed to repay the Indebtedness since the issuance of the demands. Aishka and Tanush have also failed to bring down advances under their operating lines to within their authorized credit availability. Both Aishka and Aishka 2016 have failed to make payments on their leasing facilities.
35. The Debtors have failed to address the defaults under the credit agreements, pay the amount due and owing to RBC or provide RBC with a concrete plan to repay amounts owed by the Debtors.

³⁷ *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, 2022 ONSC 6186 at [para 25](#), citing *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527 at [para 25](#). See also *Re 2806401 Ontario Inc. o/a Allied Track Services Inc.*, 2022 ONSC 5509 at [para 13](#).

³⁸ *Bank of Montreal v. Carnival National Leasing Ltd.*, 2011 ONSC 1007 at [paras 28-29](#). See also *Re 2806401 Ontario Inc. o/a Allied Track Services Inc.*, 2022 ONSC 5509 at [para 15](#) and *C & K Mortgage et al. v. 11282751 Canada Inc. et al.*, 2024 ONSC 1039 at [para 21](#).

³⁹ *C & K Mortgage et al. v. 11282751 Canada Inc. et al.*, 2024 ONSC 1039 at [para 21](#).

36. The Debtors have also failed to cooperate and provide information, despite RBC's efforts. Tanush and Aishka ceased providing margin reports to RBC since March 2024. None of the Debtors have provided year-end statements. Information requests sent by Spergel were not answered.
37. RBC is further prejudiced by the fact it has limited visibility on the Debtors. Their deposit accounts are being maintained with another financial institution. As a result, RBC no longer has transparency into the Debtors' financial position including collection of accounts receivable.
38. Given the lack of transparency and multiple defaults under the credit agreement, the appointment of a receiver is just and convenient.
39. The appointment of a Receiver is also in the best interest of all stakeholders. A receiver is necessary to preserve the value of the Debtor's remaining assets, safeguard any proceeds realized from enforcement efforts, and undertake an orderly sale of the Property where possible.
40. Accordingly, RBC respectfully submits that the appointment of Spergel as receiver of the Property is appropriate in the circumstances.

PART V – RELIEF SOUGHT

41. RBC respectfully requests that this Court grant the aforementioned relief, and issue the Receivership Order in the form appended at Tab 3 of RBC's Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th day of August, 2024.

A handwritten signature in cursive script, appearing to read "Adrienne Ho", written in dark ink.

Sanjeev Mitra / Adrienne Ho

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. Bank of Montreal v. Carnival National Leasing Ltd., 2011 ONSC 1007
2. Bank of Nova Scotia v. Freure Village on Clair Creek, 1996 CanLII 8258 (ONSC)
3. Elleway Acquisitions Ltd. v. The Cruise Professionals Ltd., 2013 ONSC 6866
4. iSpan Systems LP, 2023 ONSC 6212
5. Maple Trade Finance Inc. v. CY Oriental Holdings Ltd., 2009 BCSC 1527
6. Re 2806401 Ontario Inc. o/a Allied Track Services Inc., 2022 ONSC 5509
7. Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited, 2022 ONSC 6186
8. C & K Mortgage et al. v. 11282751 Canada Inc. et al., 2024 ONSC 1039.

**SCHEDULE “B”
RELEVANT STATUTES**

Bankruptcy and Insolvency Act (R.S.C., 1985, c. B-3)

PART XI

Secured Creditors and Receivers

Marginal note: Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or
- (c) take any other action that the court considers advisable.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

[....]

Courts of Justice Act, RSO 1990, c. C. 43

Interlocutory Orders

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

ROYAL BANK OF CANADA
Applicant

- and -

AHM TRANSPORT INC. et al.
Respondents

Court File No. CV-24-00725055-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

FACTUM OF THE APPLICANT

AIRD & BERLIS LLP

Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Sanjeev P.R. Mitra (LSO # 37934U)

Tel: (416) 865-3085
Fax: (416) 863-1515
Email: smitra@airdberlis.com

Adrienne Ho (LSO # 68439N)

Tel: (416) 637-7980
Fax: (416) 863-1515
Email: aho@airdberlis.com

Lawyers for Royal Bank of Canada