

**SUPERIOR COURT
(Commercial Division)**

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: February 13, 2023

BEFORE THE HONOURABLE CHRISTIAN IMMER, J.S.C.

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

**XEBEC ADSORPTION INC.
XEBEC RNG HOLDINGS INC.
APPLIED COMPRESSION SYSTEMS LTD.
COMPRESSED AIR INTERNATIONAL INC.
XEBEC HOLDING USA INC.
ENERPHASE INDUSTRIAL SOLUTIONS, INC.
CDA SYSTEMS, LLC
XEBEC ADSORPTION USA INC.
THE TITUS COMPANY
NORTEKBELAIR CORPORATION
XBC FLOW SERVICES – WISCONSIN INC.
CALIFORNIA COMPRESSION, LLC
XEBEC SYSTEMS USA, LLC
Debtors / Petitioners**

and
DELOITTE RESTRUCTURING INC.
Monitor

and
**FONDS DE SOLIDARITÉ DES TRAVAILLEURS DU QUÉBEC (F.T.Q.)
GNR QUÉBEC CAPITAL L.P.**

**GNR QUÉBEC CAPITAL MANAGEMENT INC.
THE REGISTRAR OF THE REGISTER OF PERSONAL AND MOVABLE REAL
RIGHTS (QUÉBEC)**
Impleaded Parties

APPROVAL AND VESTING ORDER IN RESPECT OF GNR LP

- [1] **CONSIDERING** the *Application for the Issuance of an Approval, Vesting and Assignment Order* (the “**Application**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (“**CCAA**”) and the exhibits thereto and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof;
- [2] **CONSIDERING** the Sixth Report of the Monitor dated February 10, 2023;
- [3] **CONSIDERING** the Third Amended and Restated Initial Order (the “**Third ARIO**”) issued by this Court on February 13, 2023;
- [4] **GIVEN** the provisions of the CCAA;
- [5] **CONSIDERING** that it is appropriate to issue an order approving the transaction (the “**Transaction**”) contemplated by the agreement entitled Share Purchase and Unit Repurchase Agreement dated February 8, 2023 (the “**Agreement**”) between Xebec Adsorption Inc. and Xebec RNG Holdings Inc. (“**Xebec RNG**”) as sellers (collectively the “**Vendor**”), and Fonds de solidarité des travailleurs du Québec (F.T.Q.)(“**FSTQ**”) and GNR Québec Capital L.P. as buyers (collectively, the “**Purchaser**”), a copy of which was filed as **Exhibit P-7 (under seal)** to the Application, and vesting in the Purchaser the Purchased Interest, as defined under the Agreement.
- [6] **CONSIDERING** the submissions of counsel and the testimony of Jean-François Nadon on behalf of the Monitor which lead the Court to the following conclusions:
- (a) That the Vendor and the Purchaser entered into a partnership with the goal of accelerating the development of projects generating renewable gas which call for substantial ongoing expenditures;
 - (b) That in furtherance of this partnership, the Vendor holds shares in GNR Québec L.P. and GNR Québec Capital Management Inc.;

- (c) That at the Phase 2 Deadline of the SISP, no bids were received for the purchase of these shares;
- (d) That since then, the other partner, the Purchaser has presented an offer which has lead to the agreement P-7;
- (e) That the Purchaser's offer is the most advantageous, at is allows to maintain the going concern of the entity and preserve the employment of 4 individuals;
- (f) That it is appropriate that releases be provided to both the Seller and the Buyer since a final end must be put to the partners' relation and that therefore the releases are rationally connected to the purpose of maximizing recovery and reducing eventual claims against the D&O and Administration Charge. Furthermore, no one has contested the releases.

THE COURT HEREBY:

[7] **GRANTS** the Application.

DEFINITIONS

[8] **DECLARES** that, unless otherwise defined, all capitalized terms in this Order shall have the meaning ascribed thereto in the Agreement.

SERVICE

[9] **ORDERS** that any prior delay for the presentation of the Application is hereby abridged and validated so that the Application is properly returnable today and dispenses with further service thereof.

[10] **PERMITS** service of this Order at any time and place and by any means whatsoever.

TRANSACTION APPROVAL

[11] **ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Agreement by the Vendor is hereby authorized and approved *nunc pro tunc*, with such minor alterations, changes, amendments, deletions or additions thereto as may be agreed to by the Vendor and the Purchaser, with the consent of the Monitor.

EXECUTION OF DOCUMENTATION

- [12] **AUTHORIZES** the Purchaser and the Vendor to perform all acts, sign all documents and take any necessary action to execute any agreement, contract, deed, provision, transaction or undertaking stipulated in the Agreement and any other ancillary document which could be required or useful to give full and complete effect thereto, including the Transaction.

AUTHORIZATION

- [13] **ORDERS** and **DECLARES** that this Order shall constitute the only authorization required by the Petitioners to proceed with the Transaction and that no shareholder or regulatory approval, if applicable, shall be required in connection therewith.

VESTING OF PURCHASED INTEREST

- [14] **ORDERS AND DECLARES** that upon the issuance of a Monitor's certificate substantially in the form appended as **Schedule "A"** hereto (the "**Monitor's Certificate**"), all rights, title and interest in and to the Purchased Interest shall vest absolutely and exclusively in and with the Purchaser, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges, hypothecs, mortgages, pledges, deemed trusts, assignments, judgments, executions, writs of seizure or execution, notices of sale, options, adverse claims, levies, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, taxes or other claims or encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"), including, without limiting the generality of the foregoing, all encumbrances created by order of this Court, all charges or security evidenced by registration, publication or filing pursuant to the Civil Code of Québec or any other applicable legislation providing for a security interest in personal or movable property, and those Claims listed on Schedule "B" hereto (all of which are collectively with the Claims, referred to as the "**Encumbrances**").
- [15] For greater certainty, **ORDERS** that all of the Encumbrances, affecting or relating to the Purchased Interests be cancelled and discharged as against the Purchased Interest, in each case effective as of the issuance of the Monitor's Certificate.
- [16] **ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Interest shall stand in the place and stead of the Purchased Interest, and that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances shall attach to the net proceeds

from the sale of the Purchased Interest with the same priority as they had with respect to the Purchased Interest immediately prior to the sale, as if the Purchased Interest had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

- [17] **AUTHORIZES AND DIRECTS** the Monitor to use the net proceeds from the sale of the Purchased Assets to pay any and all outstanding invoices of the beneficiaries of the Administration Charge (as defined in the Third ARIO), provided that such payments shall not affect or reduce the quantum of the Administration Charge, but only according to the conditions and limits provided for in the Second DIP Term Sheet (as defined in the Third ARIO).
- [18] **ORDERS** the Monitor to file with the Court a copy of the Monitor's Certificate, as soon as practicable after issuance thereof.
- [19] **ORDERS** that the Monitor may rely on written notice from the Vendor and the Purchaser regarding the fulfillment of conditions to closing under the Agreement and shall have no liability with respect to the delivery of the Monitor's Certificate.
- [20] **ORDERS AND DIRECTS** the Monitor to serve on the service list in the within CCAA proceedings, post on the Monitor's website and file with the Court a copy of the Monitor's Certificate, as soon as practicable after the issuance thereof.

CANCELLATION OF SECURITY REGISTRATIONS

- [21] **ORDERS** the *Quebec Personal and Movable Real Rights Registrar* to strike and discharge any registration, as the case may be, in connection with the Purchased Interest, in order to allow the transfer to the Purchaser of the Purchased Interest free and clear of such registrations.
- [22] **ORDERS** the *Quebec Personal and Movable Real Rights Registrar*, upon presentation of the required form with a true copy of this Order and the Certificate, to reduce the scope of the registration numbers listed in **Schedule "B"** hereto in connection with the Purchased Assets in order to allow the transfer of said Purchased Assets to the Buyer free and clear of registrations on the following Vendor's assets:
- (a) right, title and interest in and to the issued and outstanding shares in the capital of the GNR Québec Capital Management Inc.; and
 - (b) right, title and interest in and to the limited partnership units in the capital of GNR Québec Capital L.P.

PROTECTION OF PERSONAL INFORMATION

- [23] **ORDERS** that, pursuant to sub-section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 or any similar provision of any applicable provincial legislation (collectively, the “**Applicable Privacy Laws**”), the Petitioners and the Monitor are authorized to disclose and transfer to the Purchaser the personal information in the custody or control of the Petitioners set out in the Agreement (the “**Disclosed Information**”). The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Petitioners.
- [24] **ORDERS** that the Purchaser shall:
- (a) maintain and protect the Disclosed Information with security safeguards appropriate to the Disclosed information and as may otherwise be required by Applicable Privacy Laws;
 - (b) use and disclose the Disclosed Information for the purposes for which the Disclosed Information was collected by the Petitioners and as may otherwise be permitted by Applicable Privacy Laws; and
 - (c) give effect to any withdrawals of consent of the individuals to whom the Disclosed Information relates.

VALIDITY OF THE TRANSACTION

- [25] **ORDERS** that notwithstanding:
- (a) the pendency of these proceedings;
 - (b) any petition for a bankruptcy order now or hereafter issued pursuant to the BIA and any order issued pursuant to any such petition; or
 - (c) the provisions of any federal or provincial legislation;

the vesting of Purchased Interest contemplated in this Order, as well as the execution of the Agreement authorized by this Order, and the payments, distributions and disbursements made pursuant to or in connection with this Order are to be binding on any trustee in bankruptcy that may be appointed, and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against the Petitioners, the Purchaser, or the Monitor.

RELEASES

[26] **ORDERS** that effective as of the issuance of the Monitor's Certificate (a) the current and former directors, officers, employees, legal counsel and advisors of the Vendor; (b) the Monitor and its legal counsel; and (c) the Purchaser and its respective current and former directors, officers, employees, legal counsel and advisers (in such capacities, collectively, the "**Released Parties**") shall be deemed to be forever irrevocably released and discharged from any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the issuance of the Monitor's Certificate or undertaken or completed in connection with or pursuant to the terms of this Order in respect of, relating to, or arising out of (i) the business, operations, assets, property and affairs of Xebec RNG wherever or however conducted or governed, the administration and/or management of the Vendor, these CCAA proceedings and/or the Chapter 15 case commenced in the United States Bankruptcy Court for the District of Delaware, as they relate to the Vendor, (ii) the Agreement and any agreement, document, instrument, matter or transaction involving the Vendor arising in connection with or pursuant to any of the foregoing and/or the consummation of the Transaction, or (iii) the Amended and Restated Limited Partnership Agreement intervened on May 29, 2020 between the Debtor Xebec Adsorption Inc., the mises en cause Fonds de solidarité des travailleurs du Québec (F.T.Q.) and GNR Québec Capital Management Inc., (collectively the "**Released Claims**"), which Released Claims shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties; provided that, nothing in this paragraph shall waive, discharge, release, cancel or bar (x) any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA or claim with respect to any act or omission that is determined by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, or (y) any obligations of any of the Released Parties under or in connection with the Purchase Agreement and/or any agreement, document, instrument, matter or transaction involving the Sellers arising in connection with or pursuant to any of the foregoing.

THE MONITOR

- [27] **DECLARES** that the Monitor shall incur no liability as a result of acting in accordance with this Order, other than any liability arising out of or in connection with the gross negligence or wilful misconduct of the Monitor.
- [28] **DECLARES** that no action lies against the Monitor by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Monitor or belonging to the same group as the Monitor shall benefit from the protection arising under the present paragraph.
- [29] **DECLARES** that nothing contained herein shall require the Monitor to occupy or to take control, or to otherwise manage all or any part of the Interest of the Petitioners. The Monitor shall not, as a result of this Order, be deemed to be in possession of any assets or interest of the Petitioners within the meaning of environmental legislation, the whole pursuant to the terms of the CCAA.
- [30] **ORDERS AND DECLARES** that no provision of this Order is intended to appoint the Monitor as an officer, director or employee of any of the Petitioners, de facto or otherwise, or to create a fiduciary duty to any party, including any creditor or shareholder of the Petitioners. Additionally, nothing in this Order shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, or receiver and manager of any of the Petitioners and any distribution made to the creditors of the Petitioners will be deemed to have been made by the Petitioners.


SEALING

- [31] **ORDERS** that the Agreement, **Exhibit P-7** shall be filed under seal and kept confidential until further order of this Court.

GENERAL

- [32] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.
- [33] **DECLARES** that the Petitioners or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of this Order on notice only to each other and the Purchaser.
- [34] **DECLARES** that the Petitioners and the Monitor shall be entitled to seek leave to vary this Order upon such terms and such notice as this Court deems just.

- [35] **REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court or in the United States of America, including without limitation the United States Bankruptcy Court for the District of Delaware, and any court or administrative body elsewhere, to give effect to this Order, and to assist the Petitioners, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and the Monitor as may be necessary or desirable to give effect to this Order in any foreign proceeding, to assist the Petitioners, the Monitor and their respective agents in carrying out this Order.
- [36] **ORDERS** provisional execution of this Order notwithstanding any appeal and without security.
- [37] **THE WHOLE** without costs.



CHRISTIAN IMMER, J.S.C.

MTRE. SANDRA ABITAN
MTRE. JULIEN MORISSETTE
MTRE. ILIA KRAVTSOV
OSLER HOSKIN & HARCOURT LLP
Attorneys for the Petitioners

Hearing date: February 13, 2023

**SCHEDULE A
DRAFT CERTIFICATE OF THE MONITOR**

CANADA

**PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

**SUPERIOR COURT
(Commercial Division)**

(Sitting as a court designated pursuant to
the *Companies' Creditors Arrangement Act*,
RSC 1985, c. C-36)

No.: 500-11-061483-224

**IN THE MATTER OF THE COMPROMISE
OR ARRANGEMENT OF:**

**XEBEC ADSORPTION INC.
XEBEC RNG HOLDINGS INC.
APPLIED COMPRESSION SYSTEMS
LTD.
COMPRESSED AIR INTERNATIONAL
INC.
XEBEC HOLDING USA INC.
ENERPHASE INDUSTRIAL SOLUTIONS,
INC.
CDA SYSTEMS, LLC
XEBEC ADSORPTION USA INC.
THE TITUS COMPANY
NORTEKBELAIR CORPORATION
XBC FLOW SERVICES - WISCONSIN INC.
CALIFORNIA COMPRESSION, LLC
XEBEC SYSTEMS USA, LLC**

Debtor/Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

CERTIFICATE OF THE MONITOR

RECITALS:

WHEREAS on September 29, 2022, the Debtors/Petitioners Xebec Adsorption Inc. & Al. filed an Application pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended ("**CCAA**") and Deloitte Restructuring Inc. was appointed as monitor thereto (the "**Monitor**").

WHEREAS on February 13, 2023, the Court issued an Order (the "**Approval and Vesting Order**") authorizing and approving, *inter alia*, the execution of a Share Purchase and Unit Repurchase Agreement by and among Xebec Adsorption Inc. (the "**Vendor**"), and Fonds de solidarité des travailleurs du Québec (F.T.Q.) and GNR Québec Capital L.P. as buyers (collectively the "**Purchaser**"), a copy of which was filed in the Court record (the "**Agreement**"), and into all the transactions contemplated therein (the "**Transaction**") with such non-material alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Monitor.

WHEREAS the Approval and Vesting Order contemplates the issuance of this Certificate of the Monitor once (a) the Agreement has been executed and delivered; and (b) the Purchase Price (as defined in the Agreement) has been paid by the Purchaser to the Vendor; and (c) all the conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

THE MONITOR CERTIFIES THAT IT HAS BEEN ADVISED BY THE VENDOR AND THE PURCHASER AS TO THE FOLLOWING:

- (a) the Agreement has been executed and delivered;
- (b) the Purchase Price (as defined in the Agreement) payable upon the closing of the Transaction and all applicable taxes have been paid; and
- (c) all conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

This Certificate was issued by the Monitor on _____ [DATE].

Deloitte Restructuring Inc., in its capacity as Monitor
to the Petitioners, and not in its personal capacity.

Per: _____

Name: _____

Title: _____

SCHEDULE B

ENCUMBRANCES TO BE VESTED

- 1) Movable hypothec without delivery by Xebec Adsorption Inc. dated July 16, 2021 in favour of Export Development Canada and registered at the Register of Personal and Movable Real Rights (RDPRM) on July 20, 2021 under number 21-0793644-0001;
- 2) Movable hypothec without delivery by Xebec Adsorption Inc. dated February 19, 2021 in favour of National Bank of Canada and registered at the Register of Personal and Movable Real Rights (RDPRM) on February 19, 2021 under number 21-0144140-0001; and
- 3) Movable hypothec without delivery by Xebec Adsorption Inc. dated December 6, 2019 in favour of National Bank of Canada and registered at the Register of Personal and Movable Real Rights (RDPRM) on February 5, 2020 under number 20-0119389-0001.