

**SUPERIOR COURT
(Commercial Division)**

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: May 24, 2023

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

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

**FORMERXBC INC. (FORMERLY XEBEC ADSORPTION INC.)
11941666 CANADA INC. (FORMERLY XEBEC RNG HOLDINGS INC.)
APPLIED COMPRESSION SYSTEMS LTD.
1224933 ONTARIO INC. (FORMERLY COMPRESSED AIR INTERNATIONAL INC.)
FORMERXBC HOLDING USA INC. (FORMERLY XEBEC HOLDING USA INC.)
ENERPHASE INDUSTRIAL SOLUTIONS, INC.
CDA SYSTEMS, LLC
FORMERXBC ADSORPTION USA INC. (FORMERLY XEBEC ADSORPTION USA INC.)
FORMERXBC PENNSYLVANIA COMPANY (FORMERLY THE TITUS COMPANY)
FORMERXBC NOR CORPORATION (FORMERLY NORTEKBELAIR CORPORATION)
FORMERXBC FLOW SERVICES – WISCONSIN INC. (FORMERLY XBC FLOW
SERVICES – WISCONSIN INC.)
CALIFORNIA COMPRESSION, LLC
FORMERXBC SYSTEMS USA, LLC (FORMERLY XEBEC SYSTEMS USA, LLC)
Debtors / Petitioners**

and
DELOITTE RESTRUCTURING INC.
Monitor

and

IVYS ADSORPTION INC.
Impleaded Party (Buyer)

**APPROVAL AND VESTING ORDER IN RESPECT OF BIOSTREAM ASSETS OF
FORMERXBC SYSTEMS USA, LLC (FORMERLY XEBEC SYSTEMS USA, LLC)**

- [1] **CONSIDERING** the *Application for (i) an Extension of the Stay of Proceedings, (ii) the Establishment of a Claims Process, (iii) the Authorization to Use Net Proceeds to Fund Cash-Flow Requirements and (iv) the Issuance of an Approval and Vesting Order in Respect of BioStream Assets of FormerXBC Systems USA, LLC (Formerly Xebec Systems USA, LLC) (the "Application")* pursuant to the *Companies' Creditors Arrangement Act, RSC 1985, c C-36, as amended ("CCAA")* and the exhibits and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof;
- [2] **CONSIDERING** the Tenth Report of the Monitor dated May 19, 2023;
- [3] **CONSIDERING** the submissions of counsel;
- [4] **CONSIDERING** the provisions of the CCAA;
- [5] **GIVEN** the Fifth Amended and Restated Initial Order rendered by the Court on March 27, 2023 (the "**Fifth ARIO**");
- [6] **CONSIDERING** that it is appropriate to issue an order approving the sale transaction (the "**Transaction**") contemplated by the agreement entitled Binding Letter of Intent For Purchase of Biostream WIP / Inventory dated May 19, 2023 (the "**Binding LOI**") between **FormerXBC Systems USA, LLC** (the "**Seller**"), and **Ivys Adsorption Inc.**, as buyer, (the "**Buyer**"), a copy of which was filed under seal as **Exhibit P-5** to the Application, and vesting in the Buyer certain work in progress and inventory (the "**Purchased Assets**").

THE COURT HEREBY:

- [7] **GRANTS** the Application, with further written reasons to follow.

DEFINITIONS

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

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 Binding LOI by the Seller 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 Seller and the Buyer, with the consent of the Monitor.

EXECUTION OF DOCUMENTATION

- [12] **AUTHORIZES** the Seller and the Buyer 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 Binding LOI and any other ancillary document which could be required or useful to give full and complete effect thereto, including entering into an asset purchase agreement.

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 ASSETS

- [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 Assets shall vest absolutely and exclusively in and with the Buyer, 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 any applicable legislation providing for a security interest in personal or movable property (all of which are collectively referred to as the "**Encumbrances**"), excluding for greater certainty the Biostream Charge (as defined below).

- [15] For greater certainty, **ORDERS** that all of the Encumbrances, affecting or relating to the Purchased Assets be cancelled and discharged as against the Purchased Assets, 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 Assets shall stand in the place and stead of the Purchased Assets, 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 Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets 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] **ORDERS** that the Monitor may rely on written notice from the Seller and the Buyer regarding the fulfillment of conditions to closing under the Binding LOI and shall have no liability with respect to the delivery of the Monitor's Certificate.
- [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 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

- [20] **ORDERS** that upon the issuance of the Monitor's Certificate, the Petitioners shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets from any registration

filed against the Petitioners, provided that the Petitioners shall not be authorized to effect any discharge that would have the effect of releasing any collateral other than the Purchased Assets, and the Petitioners shall be authorized to take any further steps by way of further application to this Court.

BIOSTREAM CHARGE

- [21] **DECLARES** that the Seller, as security for the payments to be made by the Buyer pursuant to the Biostream Transaction, be entitled to the benefit of and is hereby granted a charge and security in the five biostream units of the Purchase Assets, to the extent of the aggregate amount of \$2,000,000 (the "**Biostream Charge**").
- [22] **DECLARES** that following the initial payment by the Buyer equivalent to 25% of the Purchase Price, such charge will be discharged on a unit-by-unit basis following the payment of each instalment payment received by the Monitor from the Buyer, as confirmed by the issuance of Monitor's certificates confirming receipt of the instalments and reductions of the Biostream Charge, except for the Biostream Charge on the last biostream unit which will only be discharged upon receipt by the Monitor of the balance of payment of the Purchase Price and as confirmed by the issuance of a Monitor's certificate confirming that the Purchase Price has been paid in full and cancelling and discharging the Biostream Charge.
- [23] **DECLARES** that the Biostream Charge shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, options, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") affecting the Purchase Assets.

PROTECTION OF PERSONAL INFORMATION

- [24] **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 Buyer the personal information in the custody or control of the Petitioners set out in the Binding LOI (the "**Disclosed Information**"). The Buyer 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.
- [25] **ORDERS** that the Buyer 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

[26] **ORDERS** that notwithstanding:

- (a) the pendency of these proceedings;
- (b) any petition for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 BIA and any order issued pursuant to any such petition; or
- (c) the provisions of any federal or provincial legislation;

the vesting of Purchased Assets contemplated in this Order, as well as the execution of the Binding LOI and the assignment of the Assumed Contracts 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 Buyer, or the Monitor, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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 assets of the Petitioners. The Monitor shall not, as a result of this Order, be deemed to be in

possession of any assets 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.

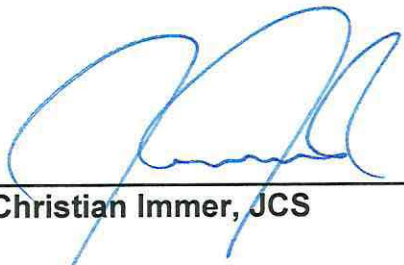
SEALING

- [31] **ORDERS** that the Binding LOI, Exhibit P-5 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 Buyer.
- [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, JCS

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

Hearing date: **May 24, 2023**

SCHEDULE A
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:**

**FORMERXBC INC. (FORMERLY XEBEC
ADSORPTION INC.)
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WISCONSIN INC.)
CALIFORNIA COMPRESSION, LLC
FORMERXBC SYSTEMS USA, LLC (FORMERLY
XEBEC SYSTEMS USA, LLC)**

Debtors/Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

CERTIFICATE OF THE MONITOR

**(CLOSING OF THE BIOSTREAM TRANSACTION AND CREATION OF THE
BIOSTREAM CHARGE)**

RECITALS:

WHEREAS on September 29, 2022, the Debtors/Petitioners Xebec Adsorption Inc. et 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 May 24, 2023, the Court issued the *Approval, Vesting and Assignment Order in Respect of Assets of FormerXBC Systems USA, LLC* (the "**Approval and Vesting Order**") authorizing and approving, *inter alia*, the execution of the Binding LOI and the conclusion of a definitive asset purchase agreement reflecting the terms of the Binding LOI (the "**Purchase Agreement**"), between FormerXBC Systems USA, LLC, as seller, (the "**Seller**"), and Ivys Adsorption Inc. as buyer, (the "**Buyer**") and all the transactions contemplated therein (the "**Transaction**"), with such non-material alterations, changes, amendments, deletions or additions thereto, as may be agreed with the consent of the Monitor.

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

WHEREAS, following confirmation of the above, it also contemplated that the Monitor will issue this Certificate creating and effecting the Biostream Charge (as defined in the Approval and Vesting Order).

THE MONITOR CERTIFIES THAT IT HAS BEEN ADVISED BY THE SELLER AND THE BUYER AS TO THE FOLLOWING:

- (a) the Purchase Agreement has been executed and delivered;
- (b) the Initial Payment payable upon the closing of the Transaction has been paid and received by the Monitor;
- (c) all conditions to the closing of the Transaction have been satisfied or waived by the parties thereto, such that closing has occurred; and
- (d) The Biostream Charge is accordingly created and effected, in accordance with para. 21 of the Approval and Vesting Order.

This Certificate was issued by the Monitor on ●, 2023.

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

Name: Jean-François Nadon, CPA, CIRP, LIT

Title: President
