

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: May 5, 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

**ORDER AUTHORIZING THE MONITOR TO PAY AMOUNTS OWED UNDER THE
THIRD DIP FACILITY AND SECURED BY THE THIRD DIP CHARGE**

- [1] **CONSIDERING** the *Application of the Monitor for Authorization of Payments in Connection with the Third DIP Facility and the Third DIP Charge* (the “**Application**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (“**CCAA**”), the exhibit thereto and the affidavit of Mr. Jean-François Nadon, filed in support thereof;
- [2] **CONSIDERING** the Ninth Report of the Monitor dated May 3, 2023;
- [3] **CONSIDERING** the submissions of counsel;
- [4] **CONSIDERING** the Fifth Amended and Restated Initial Order (the “**Fifth ARIO**”) issued by this Court on March 27, 2023;
- [5] **CONSIDERING** that, following the issuance of the AVOs, the Monitor issued seven (7) certificates on February 7, 15, 21 and 27, 2023, March 21 and 24, 2023 and April 5, 2023, which were filed in the Court record, and which confirmed the closing of the transactions relating thereto;
- [6] **GIVEN** that, pursuant to the AVOs, the Net Proceeds were transferred to the Monitor and are currently held in trust by the Monitor;
- [7] **GIVEN** that it is appropriate and justified that the Monitor be allowed to pay from the Net Proceeds, sums owed under the Third DIP Facility and secured by the Third DIP Charge, the whole in accordance with the mechanism set forth hereinafter; furthermore, in light of the important carrying costs of the third DIP facility, it is appropriate to order provisional execution of this Order notwithstanding any appeal;
- [8] **GIVEN** the provisions of the CCAA:

THE COURT HEREBY:

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

- [11] **DECLARES** that the Monitor is authorized to pay, from the Net Proceeds, amounts owed under the Third DIP Facility and secured under the Third DIP Charge, as and when they become due, without further order by this Court.
- [12] **DECLARES** that, upon making payments pursuant to paragraph [11] herein and upon receiving confirmation from EDC of the reimbursement of the obligations secured by the Third DIP Charge, the Monitor shall notify and file with the Court record a certificate confirming and effecting cancellation of the Third DIP Charge, as applicable and as the case may be, without further order of this Court.
- [13] **DECLARES**, for greater certainty, that the certificate of the Monitor to be issued and filed pursuant to this order, shall validly discharge the Third DIP Charge, as applicable, without the necessity of a future amendment of the Fifth ARIO or of a supplemental or subsequent order of this Court.
- [14] **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 execution of this Order, and the payments 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 beneficiaries of the CCAA Charges or the Monitor.
- [15] **DECLARES** that this Order shall have full force and effect in all provinces and territories of Canada.
- [16] **DECLARES** that the Monitor may, from time to time, apply to this Court for directions concerning the exercise of its powers, duties and rights hereunder or in respect of the proper execution of this Order.
- [17] **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 Monitor and its 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 Monitor as may be necessary or desirable to give effect to this Order in any foreign proceeding, to assist the Monitor and its respective agents in carrying out this Order.

- [18] **ORDERS** that any prior delay for the presentation of the Application is hereby abridged and validated so that the Application is properly returnable and dispenses with further service thereof.
- [19] **PERMITS** service of this Order at any time and place and by any means whatsoever.
- [20] **ORDERS** the provisional execution of this Order notwithstanding any appeal and without security.
- [21] **THE WHOLE** without costs.



A handwritten signature in blue ink, appearing to read 'Christian Immer', is written over a horizontal line.

Christian Immer, J.S.C.

MTRE. JOCELYN T. PERREAULT
MTRE. MARC-ÉTIENNE BOUCHER
McCarthy Tétrault LLP
Attorneys for the Monitor

Hearing date: May 5, 2022