

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
N°: 500-11-047563-149

SUPERIOR COURT
COMMERCIAL DIVISION

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

Date: June 4, 2015

IN THE PRESENCE OF: THE HONOURABLE MARTIN CASTONGUAY, J.S.C.

IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF:

GRADEK ENERGY INC.

and

GRADEK ENERGY CANADA INC.

Petitioners

and

R H S T DEVELOPMENT INC.

and

THOMAS GRADEK

Mis en cause

and

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.

Monitor

ORDER

1. The Petitioners present an *Amended Motion for a Eighth Order Extending the Stay Period* dated June 2nd, 2015 (the "**Motion**") pursuant to sections 9 and 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 ("**CCAA**");
2. **CONSIDERING** the Motion and affidavit in support thereof, and the representations of counsel;

FOR THESE REASONS, THE COURT:

3. **GRANTS** the Motion in part;
4. **DECLARES** that the terms and conditions contained in the *Third Commitment Letter for the Interim Financing Credit Facility ("DIP Facility")* dated April 15, 2015, and communicated herewith as Exhibit R-2, apply to the use of the sum of \$277,504.63 received by Gradek Energy from Revenu Québec in respect of the provincial portion of the 2013 Tax Credits (otherwise payable to Investissement Québec), with the following modifications:
 - (a) Lender: Elmag and Sorensen are replaced for the entirety of the document by "Investissement Québec", unless otherwise specified in this Order;
 - (b) Third DIP Credit Facility: The term "Third DIP Credit Facility" is replaced for the entirety of the document by "Fourth DIP Credit Facility", unless otherwise specified in this Order, and all of the advance made is \$277,504.63;
 - (c) Maturity Date: The following is added at the end of sub-paragraph (a): ", the Third DIP Credit Facility and the Fourth DIP Credit Facility";
 - (d) Availability and Disbursement: The funds are made immediately available to the Borrower;
 - (e) Security: The security is increased to CAD\$2,027,504.63 plus interest at the rate of twenty-five percent (25%) thereof and the Obligations of Gradek Energy towards Investissement Québec secured by the Third DIP Charge include the principal of the Fourth DIP Credit Facility, any interests accrued thereon and the fees and disbursements of Investissement Québec's counsel in connection with the granting and recovery of the Fourth DIP Credit Facility;
 - (f) Permitted Encumbrances and Priority: The sums owed to Investissement Québec that are secured by the Interim Lenders Charge will only be subordinate to the "**Administrative Charge**" created under the Extension Order and applicable deemed trust and statutory charges;
 - (g) Other Terms and Conditions:
 - (i) the security contemplated in the first bullet is "CAD\$2,027,504.63", and the extension of the Initial Order shall be satisfactory to Elmag, Sorensen, the November 2014 DIP Lenders and Investissement Québec;
 - (ii) paragraph b) of the eighth bullet is replaced by "the Borrower is considered in Default under the November 2014 DIP Facility, the Additional DIP Credit Facility or the Third DIP Credit Facility";
 - (iii) paragraph h) of the eighth bullet is replaced by "if any and all of the DIP Credit Facilities are not fully paid to Elmag, Sorensen, the Additional DIP Lenders and the DIP Lenders on the Maturity Date";

- (iv) at the end of the eighth bullet, the following paragraph (i) is added: "if Gradek Energy fails to file with the relevant tax authorities its 2014 Federal and Provincial R&D tax credit requests at the latest by June 30th, 2015";
 - (v) the following paragraph (j) is added at the end of the eighth bullet: "if an additional DIP financing of not less than \$200,000 is not obtained by Gradek Energy and disbursed to it at the latest on June 8, 2015, at 2:00 p.m., it being understood that any charge to be created to secure any such additional DIP financing shall be subordinated to the portion of the Third DIP Charge securing the repayment of the Fourth DIP Credit Facility";
 - (h) Decision/Majority Lenders: The clause is removed;
 - (i) Right of DIP Lender to Credit Bid: The clause is replaced by "Nothing in this DIP term sheet or any DIP Facility documentation shall prevent Investissement Québec from offering to purchase some or all of the Collateral in consideration of the satisfaction, in whole or in part, of any obligations of the Borrower under the Additional DIP Facility, the November 2014 DIP Facility, the Third DIP Credit Facility and the Fourth DIP Facility (a "**Credit Bid**"), and the Borrower shall not restrict the right to do a Credit Bid."; and
 - (j) Encumbrances and Priority: The third bullet is replaced by "the portion of the Third DIP Charge securing the repayment of the November 2014 DIP Facility, the Additional DIP Credit Facility and the Third DIP Credit Facility will be subordinated to the portion of the Third DIP Charge securing the repayment of the fourth DIP Credit Facility";
5. **ORDERS and DECLARES** that the Initial Order, as amended and restated from time to time, is hereby re-amended and restated ("**Fourth Amendment and Restatement of the Initial Order**") in the manner described hereinbelow:

- (a) Paragraph 16 is amended as follows:

16. **ORDER** that Petitioners be and are hereby authorized to borrow, repay and reborrow from Investissement Québec, Elmag Investment Inc., Alfred Sorensen, Robert Andrews and Thom Dawson (the "**Interim Lenders**") such amounts from time to time as Petitioners may consider necessary or desirable, up to a maximum principal amount of \$1,877,504.63 outstanding at any time, on the terms and conditions as set forth in the Interim Financing Term Sheet attached hereto as Exhibit R-12 (the "**Interim Financing Term Sheet**") and in the Interim Financing Documents (as defined hereinafter), as well as in the Commitment Letter for the Interim Financing Credit Facility dated January 26, 2015 in the Third Commitment Letter for the Interim Financing Credit Facility dated April 15, 2015 and in the Fourth Commitment Letter for the Interim Financing Credit Facility dated June 2nd, 2015 (Exhibit R-2 to the Amended Motion for an Eight Order Extending the Stay Period and for an Additional Interim Lenders Charge dated June 2nd, 2015), to fund the ongoing expenditures of Petitioners and to pay such other amounts as are permitted by the terms of the Order and the Interim Financing Documents (as defined hereinafter) (the "**Interim Facility**");

(b) Paragraph 19 is amended as follows:

19. **DECLARE** that all of the Property of Petitioners and is hereby subject to a charge and security for an aggregate amount of \$2,027,504.63 plus interest at the rate of twenty-five percent (25%) thereof (such charge and security is referred to herein as the “**Interim Lenders Charge**”) in favour of the Interim Lenders as security for all obligations of Petitioners to the Interim Lenders with respect to all amounts owing (including principal, interest and the Interim Lenders Expenses) under or in connection with the Interim Financing Term Sheet and the Interim Financing Documents. The Interim Lenders Charge shall have the priority established by paragraphs 36 and 37 of this Order;

(c) Paragraph 36 is amended as follows:

36. **DECLARE** that the priorities of the Administration Charge and the Interim Lenders Charge (collectively, the “**CCAAs**”), as between them with respect to any Property to which they apply, shall be as follows:


(a) first, the Administrative Charge;

(b) second, the sums owed to Investissement Québec that are secured by the Interim Lenders Charge; and


(c) third, the Interim Lenders Charge.

6. **ORDERS** that the Monitor shall keep in trust the full amount of the Fourth DIP Credit Facility (CAD \$277,504.63) and that said amount shall be remitted to Gradek Energy only after the additional DIP financing of not less than CAD \$200,000 referred to in paragraph 5(g)(v) of this Order is obtained by Gradek Energy and disbursed to it;
7. **ORDERS** that if the additional DIP financing of CAD \$200,000 referred to in paragraph 5(g)(v) of this Order is not obtained by Gradek Energy and disbursed to it at the latest by June 8, 2015 at 2:00 p.m., the Fourth DIP Credit Facility shall be automatically cancelled and, in such case, **ORDERS** the Monitor to transfer forthwith to Investissement Québec, in immediately available funds, the amount of CAD \$277,504.63 currently held in trust, to be applied by Investissement Québec in partial repayment of the Petitioners' indebtedness secured by the IQ Hypothecs (as defined in the Amended Initial Order);
8. **ORDERS** that the letter of interest communicated as Exhibit R-1 in support of the present Motion be kept confidential and under seal with the Court until, as the case may be, further order of this Court or written agreement from the Petitioners and the Monitor. However, all creditors of the Petitioners shall be entitled to obtain disclosure of said exhibit upon written request and provided they have signed a confidentiality agreement in standard form;
9. **DECLARES** that the notices given of the presentation of the Motion are proper and sufficient;
10. **ORDERS** the provisional execution of this Order notwithstanding any appeal and without the necessity of furnishing any security.

11. WITHOUT COSTS.


MARTIN CASTONGUAY, J.S.C.

COPIE CONFORME


Greffier adjoint