

CANADA
PROVINCE OF QUEBEC
DISTRICT OF BEDFORD

SUPERIOR COURT
COMMERCIAL DIVISION
(Sitting as a court designated pursuant to the
Companies Creditors Arrangement Act)

Nº: 460-11-001918-104

DATE: JUNE 1ST, 2010

PRESENT: THE HONOURABLE JUSTICE
GAETAN DUMAS, S.C.J.

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

AAER INC.

and

AAER USA INC.

and

WIND-SMART LLC

Debtors/Petitioners

and

SAMSON BÉLAIR / DELOITTE & TOUCHE INC.

Monitor

J U D G M E N T

SEEING the Motion for authorization to sell most of AAER Inc.'s assets and for a second extension of the initial order presented by Debtors/Petitioners, the affidavit of Mr. Éric Phaneuf dated June 1st, 2010 and the exhibits and the Monitor's Report filed in support of the Motion;

SEEING representations made by the parties' attorneys present at the hearing and their consent to the terms of the present order;

THIS HONOURABLE COURT:

1. **GRANTS** the present Motion for Authorization to Sell Most of AAER Inc.'s ("**AAER**") assets (the "**Motion**");

I. **SERVICE**

2. **DECLARES** that the time for service of the Motion is hereby abridged such that the Motion is properly presentable.

3. **DECLARES** that the service of the Motion constitutes good and sufficient service on all persons and further **DECLARES** that the Petitioners are relieved of any other requirements for service of the Motion;

II. **AUTHORIZATION OF THE SALE OF ASSETS TO 7525451 CANADA INC. ("PIONEER") (A SUBSIDIARY OF PIONEER POWER SOLUTIONS INC.) AND VESTING ORDER**

4. **APPROVES** and **AUTHORIZES** AAER to enter into the Asset Purchase Agreement (R-2) (the "**Pioneer APA**") between AAER and Pioneer and **AUTHORIZES** AAER to perform its obligations pursuant thereto;

5. **AUTHORIZES** the sale, transfer and assignment of the Purchased Assets (as defined in the Pioneer APA) (the "**Pioneer Purchased Assets**") to Pioneer in accordance with the terms of the Pioneer APA (the "**Pioneer Transaction**") and **AUTHORIZES** AAER (and the Monitor as the case may be) to take any and all actions necessary to proceed with the Pioneer Transaction including, without limiting the generality of the foregoing, to execute any and all documents that may be necessary or useful to the conclusion of the transactions contemplated in the Pioneer APA;

6. **AUTHORIZES** and **APPROVES** the assignment and transfer to Pioneer of the rights of AAER in the Intangible Assets listed in lot number 5 of the Information Memorandum (R-1) and the Intellectual Property being part of the Pioneer Purchased Assets;

7. **ORDERS** Samson Bélair / Deloitte & Touche Inc. in its capacity as monitor (the "**Monitor**"), upon the closing of the Pioneer Transaction, to file with the office of this Court a certificate in the form substantially similar to the form attached hereto as *Schedule A*, which is hereby approved (the "**Pioneer Certificate**");

8. **DECLARES** that upon the filing of the duly signed Pioneer Certificate, any and all right, title and interest of AAER in and to the Pioneer Purchased Assets shall be and are hereby vested in Pioneer absolutely and forever free and clear of and from any and all encumbrances, liens, claims, rights, titles, interests, security interests, charges, pledges, mortgages, hypothecations, hypothecs, judgments, deemed trusts, executions, writs of seizure and sale, options, adverse claims, levies, charges, priorities, remedies from facts which exist as of the closing of the Pioneer Transaction whether known or unknown, or any and all other rights of use, disputes and debts of all persons or entities of any kind whatsoever and howsoever arising, whether contractual or statutory, by operation of law or equity or otherwise, whether perfected, attached, registered or filed, whether secured, unsecured or otherwise (each of which, being herein referred to as an "**Encumbrance**");

9. **DECLARES** that Pioneer shall not assume any successor employer liability as the case may be, to the extent permitted by law;
10. **ORDERS** AAER to remit forthwith to the Monitor, the proceeds of the Pioneer Transaction, namely, in the amount of \$450,000, for it to be used and distributed by the Monitor in the following order:
- (a) \$170,000 to be deposited in an escrow fund with the Monitor for a sufficient period of time to pay the outstanding wages, salaries, bonuses and vacation pay payable to the AAER's employees for the period of time up to the closing date of the Pioneer Transaction (expressly excluding severance and any prior notice amounts, contractually or by law, payable to AAER's employees) (the "**Employee Fund for Salaries and Vacations**") pursuant to the amounts owed according to the table filed herewith *under seal* as Exhibit R-3, subject to a verification by the DIP Lender, at its own cost, and its authorization, to be given within 10 days of the closing of the Pioneer Transaction ;
 - (b) \$200,000, representing an amount equivalent to the Administrative Charge ("Charge d'administration" as defined in the Initial Order), to be kept by the Monitor to reimburse the sums owed by AAER that are secured by the Administrative Charge until the discharge of same, subject to a verification (except for privileged information) by the DIP Lender, at its own cost, and its authorization, to be given within 30 days of the closing of the Pioneer Transaction;
 - (c) \$75,000 to Propriétés Olymbec Enr. to pay the rent owed by AAER for the rent of the month of May 2010; and
 - (d) \$15,000, to Finloc Inc., the DIP Lender ("Prêteur temporaire" as defined in the Initial Order) (the "**DIP Lender**"), to reimburse, partially, the DIP Loan ("Financement temporaire" as defined in the Initial Order) which is secured by the DIP Charge ("Charge pour garantir le financement temporaire" as defined in the Initial Order);
11. **AUTHORIZES** the Monitor to pay all outstanding wages, salaries, bonuses and vacation pay payable to the AAER's employees for the period of time up to the closing date of the Pioneer Transaction (expressly excluding severance and any prior notice amounts, contractually or by law, payable to AAER's employees) out of the Employee Fund for Salaries and Vacations pursuant to the amounts owed according to the table already filed *under seal* as Exhibit R-3, subject to a verification of the amounts by the DIP Lender, at its own cost, and its authorization, to be given within 10 days of the closing of the Pioneer Transaction;
12. **EXEMPTS** the Petitioners and the Monitor, from the requirement (if any) to seek and obtain shareholders' approval pursuant to any Federal or Provincial legislation with regard to the Pioneer Transaction;
13. **AUTHORIZES** AAER or the Monitor as the case may be, in accordance with Section 191 of the *Canada Business Corporations Act* to file within 10 days of the Closing Date (as defined in the APA) articles of reorganization or any other document that may be required and prepared by Pioneer in order to change each of the AAER's name and any business names used by the Petitioners, containing any mention of "AAER" without the requirement (if any)

of obtaining director or shareholders' approval pursuant to any Federal or Provincial legislation;

14. **DECLARES** that the Order sought hereby constitutes the only authorization required by Petitioners to proceed with the Pioneer Transaction and, for greater certainty, **DECLARES** that the parties involved in the Pioneer Transaction are exempted from requiring or obtaining any authorization that may have been required from any person or authority whatsoever;

III. AUTHORIZATION OF THE SALE OF ASSETS TO GLOBAL CASTING INC. ("GLOBAL") AND VESTING ORDER

15. **APPROVES** and **AUTHORIZES** AAER to enter into the Asset Purchase Agreement (R-5) (the "**Global APA**") between AAER and Global and **AUTHORIZES** AAER to perform its obligations pursuant thereto;
16. **AUTHORIZES** the sale, transfer and assignment of the Purchased Assets (as defined in the Global APA) (the "**Global Purchased Assets**") to Global in accordance with the terms of the Global APA (the "**Global Transaction**") and **AUTHORIZES** AAER (and the Monitor as the case may be) to take any and all actions necessary to proceed with the Global Transaction including, without limiting the generality of the foregoing, to execute any and all documents that may be necessary or useful to the conclusion of the transactions contemplated in the Global APA;
17. **ORDERS** the Monitor, upon the closing of the Global Transaction, to file with the office of this Court a certificate in the form substantially similar to the form attached hereto as *Schedule B*, which is hereby approved (the "**Global Certificate**");
18. **DECLARES** that upon the filing of the duly signed Global Certificate, any and all right, title and interest of AAER in and to the Global Purchased Assets shall be and are hereby vested in Global absolutely and forever free and clear of and from any and all Encumbrances, except for Cargolution Inc.'s retention rights over the five generators located in the port of Montreal being part of the Global Purchased Assets relating to unpaid transportation and storage fees and, as the case may be, the retention rights of any supplier on the Global Purchased Assets;
19. **ORDERS** AAER to remit forthwith to the Monitor, the proceeds of the Global Transaction, namely in the amount of \$280,000, for it to be distributed by the Monitor in the following order:
 - (a) any amount owed by AAER, as the case may be, to Hydro-Québec secured by the legal hypothec registered by Hydro-Québec on the universality of the movable goods of AAER in order to guaranty the cost of energy provided for the operation of the businesses published in the Register of Personal and Moveable Real Rights (the « **RPMRR** ») under the number 10-0104933-0001, subject to the validity of this hypothec if there is any amount owed and a payment is necessary and to a verification by the DIP Lender, at its own cost, and its authorization, to be given within 10 days of the closing of the Global Transaction; and

(b) the balance, to the DIP Lender, to reimburse, partially, the DIP Loan ("Financement temporaire" as defined in the Initial Order) which is secured by the DIP Charge ("Charge pour garantir le financement temporaire" as defined in the Initial Order);

20. **EXEMPTS** the Petitioners and the Monitor, from the requirement (if any) to seek and obtain shareholders' approval pursuant to any Federal or Provincial legislation with regard to the Global Transaction;

21. **DECLARES** that the Order sought hereby constitutes the only authorization required by Petitioners to proceed with the Global Transaction and, for greater certainty, **DECLARES** that the parties involved in the Global Transaction are exempted from requiring or obtaining any authorization that may have been required from any person or authority whatsoever;

IV. EXTENSION OF THE STAY PERIOD

22. **ORDERS** that the Stay Period ("*Période de suspension*" as defined in the Initial Order), as subsequently extended by this Court, shall be extended for a period of five (5) days, up to and including June 7, 2010;

23. **DECLARES** that the Initial Order shall be otherwise unchanged, except to expressly provide that the DIP Lender shall not be affected by the stay of Proceedings during the Stay Period;


V. AID AND ASSISTANCE OF OTHER COURTS

24. **REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province or any court or any judicial, regulatory or administrative body of the United States and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this Order;

VI. GENERAL

25. **ORDERS** the provisional execution of the Order notwithstanding any appeal and without the necessity of furnishing any security;

26. **THE WHOLE** without costs.


GAÉTAN DUMAS, S.C.J.

VRAIE COPIE

OFFICIER AUTORISÉ L.F.I.
District de Bedford