

SUPERIOR COURT

COMMERCIAL DIVISION

(Sitting as a court designated pursuant to the
Companies Creditors Arrangement Act)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF BEDFORD

N°: 460-11-001918-104

Date: May 7, 2010

In the presence of: Honourable Gaétan Dumas, J.S.C.

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

ORDER

(Motion for a first extension of the Initial Order and to establish the
procedures relating to the claims process and the creditors' meeting)

SEEING AAER INC., AAER USA INC. and WIND-SMART LLC (the "Petitioners")
Motion for a first extension of the Initial Order and to establish the procedures relating
to the claims process and the creditors' meeting pursuant to the *Companies' Creditors
Arrangement Act*, R.S.C. 1985, C-36 (the "Motion"), the affidavit of Éric Phaneuf filed
in support thereof, the Monitor's report, and the submissions of counsels present at
the hearing;

WHEREFORE, THE COURT:

- [1] **GRANTS** the Motion for extension of the Initial Order and to establish the procedures relating to the Claims Process and the creditors' meeting (the "**Motion**") and the remedies and release sought by the Petitioners therein.

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 FILING OF THE JOINT PLAN OF ARRANGEMENT

- [4] **TAKES NOTICE** of the Petitioners' intention to file a joint plan of arrangement to all of their creditors (the "**Plan**") and **AUTHORIZES** the filing of the plan.

III. EXTENSION OF THE STAY TERMINATION DATE

- [5] **ORDERS** that the Stay Period ("*Période de suspension*") as defined in the Initial Order shall be extended for a period of 26 days, up to and including June 2, 2010.
- [6] **DECLARES** that the Initial Order shall be otherwise unchanged.

IV. CLAIMS PROCESS AND CREDITORS' MEETING**DEFINITIONS**

- [7] **DECLARES** that the following terms in this Order shall, unless otherwise indicated, have the following meanings:
- (a) "**BIA**" means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;
 - (b) "**Business Day**" means a day other than a Saturday, a Sunday, or a non-judicial day (as defined in article 6 of the *Code of Civil Procedure*, R.S.Q., c. C-25, as amended);;
 - (c) "**CCAA**" means the *Companies Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;

- (d) **"CCAA Proceedings"** means the current proceedings in respect of the Petitioners under the CCAA;
- (e) **"Chair"** is defined in paragraph [21] hereunder;
- (f) **"Claim"** means any right of any Person against the Petitioners in connection with any indebtedness, liability or obligation of any kind of Petitioners owed to such person, whether liquidated or unliquidated, determined or contingent, mature or unmatured, disputed or undisputed, legal or equitable, secured or unsecured, present or future, known or unknown, including any interest accrued thereon or costs payable in respect thereof up to the Determination Date, whether or not such right is executory or anticipatory in nature, whether a principal debt or a guarantee or a surety, including the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation is based in whole or in part on facts existing prior to the Determination Date, or which would have been a claim provable in bankruptcy if the Petitioners had become bankrupt on the Determination Date, and, without limitation, shall include (i) any Unaffected Claim, and (ii) any Restructuring Claim, provided however that in no case shall an Excluded Claim be a "Claim";
- (g) **"Claims Bar Date"** means 5:00 p.m. (Eastern Standard time) on May 31, 2010;
- (h) **"Claims Process Order"** means this Order;
- (i) **"Court"** means the Superior Court of Québec (Commercial Division);
- (j) **"Creditor"** means any Person having a Claim and may, where the context requires, include an assignee or a trustee, interim receiver, receiver, receiver/manager or other Person in right of such Person, and includes a Known Creditor, provided however that in no case shall an Excluded Creditor be a "Creditor" in respect of an Excluded Claim;
- (k) **"Creditors Information Package"** means the information package for Creditors, including a Proof of Claim form and an instructions letter explaining how to complete the form, a copy of the Claims Process Order and a notice of claims procedure, being substantially in the form of *Schedule A* hereto, which is hereby approved;
- (l) **"Creditors List"** means a list of all Known Creditors;

- (m) “**Creditors’ Meeting**” means all meetings of Creditors to be convened for the purposes of voting on the Plan and any adjournment thereof;
- (n) “**Designated Newspaper**” means *La Presse*;
- (o) “**Determination Date**” means April 8, 2010;
- (p) “**Excluded Claim**” means any claim that cannot be compromised under the terms of the CCAA and any right of any Person against the Petitioners in connection with any indebtedness, liability or obligation of any kind that came into existence after the Determination Date (except for Restructuring Claims) and any interest thereon, including any obligation of the Petitioners toward creditors who have supplied or shall supply services, utilities, goods or materials or who have or shall have advanced funds to the Petitioners after the Determination Date, but only to the extent of their claims in respect of the supply of such services, utilities, goods, materials or funds after the Determination Date and to the extent that such claims are not otherwise affected by the Plan;
- (q) “**Excluded Creditor**” means a Person having an Excluded Claim, but only in respect of such Excluded Claim and only to the extent that the Plan does not otherwise affect said Person;
- (r) “**Initial Order**” means the order of the Court in the CCAA Proceedings made on April 8, 2010;
- (s) “**Known Creditor**” means a Creditor whose Claim is included in the Petitioners’ books and records, any Creditor whose claim is acknowledged by the Petitioners, and any Creditor whose Claim becomes known to the Monitor;
- (t) “**Meeting Materials**” is defined in paragraph [13] hereunder;
- (u) “**Monitor**” means Samson Bélair / Deloitte & Touche Inc., in its capacity as monitor appointed pursuant to the Initial Order;
- (v) “**Newspaper Notice**” means the notice of this Order to be published in the Designated Newspaper in accordance with paragraph [9], which shall set out the Claims Bar Date, being substantially in the form of *Schedule A* hereto, which is hereby approved;
- (w) “**Notice of Revision or Disallowance**” means the notice referred to in subparagraph [12](a) hereof, advising a Creditor that the Monitor has revised or disallowed all or part of such Creditor’s Claim set out in its

Proof of Claim and setting out the reasons for such revision or disallowance;

- (x) **"Notice of Creditors' Meeting"** is defined in subparagraph [13](a);
- (y) **"Person"** means any individual, corporation, limited or unlimited liability company, general or limited partnership, association, trust, unincorporated organization, joint venture, government body or agency, or any other entity;
- (z) **"Petitioners"** means, collectively, AAER Inc., AAER USA Inc. and Wind Smart LLC;
- (aa) **"Plan"** means a joint plan of compromise or arrangement filed or to be filed by the Petitioners pursuant to the CCAA, as such plan may be amended or supplemented from time to time by the Petitioners only;
- (bb) **"Proof of Claim"** means the Proof of Claim form referred to in paragraphs [11], [12] and [13] hereof, being substantially in the form of *Schedule B* hereto, which is hereby approved;
- (cc) **"Proven Claim"** means the amount of any Claim of any Creditor as of the Determination Date, determined in accordance with the provisions of the CCAA and this Order, and proven by delivering a Proof of Claim to the Monitor;
- (dd) **"Restructuring Claim"** means any right of any Person against the Petitioners in connection with any indebtedness, liability or obligation of any kind owed to such Person arising out of the restructuring of the Petitioners, or the disclaimer, resiliation, repudiation or termination of any contract, lease, employment agreement or other agreement, whether written or oral, including any claim of any Person who receives a notice of disclaimer, resiliation, repudiation or termination from the Petitioners, any claim for severance pay and unpaid vacation to any and all employees whenever terminated and any claim from the tax authorities resulting, directly or indirectly, from the acceptance of the Plan by the Creditors and its approval by the Court, including Goods and Services Tax and provincial sales taxes payable following a reduction and/or a settlement of the Petitioners' debt and, provided however that in no case shall an Excluded Claim be a Restructuring Claim;
- (ee) **"Unaffected Claim"** shall have the meaning ascribed to such term in the Plan;

- (ff) **"Voting Claim"** of a Creditor means the Proven Claim of the Creditor unless the Proven Claim of the Creditor is not finally determined at the time of the Creditors' Meeting, in which case it means the Claim of the Creditor which is accepted for voting purposes in accordance with the provisions of this Order, the Plan and the CCAA;
- (gg) **"Website"** means the website of the Monitor relating to the CCAA Proceedings located at the address: www.deloitte.com/ca/aaer.

CLAIMS PROCEDURE

- [8] **ORDERS** that, on May 12, 2010 at the latest, the Monitor shall send by ordinary mail, postage prepaid, a copy of the Creditors Information Package to each Known Creditor or to any Person claiming to be a Creditor and requesting a copy of the Creditors Information Package, as soon as practicable following receipt of such request;
- [9] **ORDERS** that, on May 12, 2010 at the latest, the form of Newspaper Notice, which is hereby approved, shall be published by the Monitor in the Designated Newspaper;
- [10] **ORDERS** that, on May 12, 2010 at the latest, the Monitor shall publish a copy of the Creditors Information Package on the Website;
- [11] **ORDERS** that, unless otherwise authorized by this Court, a Creditor who does not file a Proof of Claim by the Claims Bar Date shall not be entitled to any further notice, shall not be entitled to participate as a Creditor in these proceedings, shall not be entitled to vote on any matter in these CCAA Proceedings, including the Plan, shall be forever barred from asserting or enforcing any Claim against the Petitioners, which Claim shall be forever extinguished and shall not receive any distribution under the Plan;
- [12] **ORDERS** that the following procedure shall apply with respect to all Proofs of Claim received by the Monitor before the Claims Bar Date:
- (a) the Monitor, together with the Petitioners, shall review the Proof of Claim to determine the amount of the Proven Claim for voting and distribution purposes. Where applicable, the Monitor shall send the Creditor a Notice of Revision or Disallowance by mail, fax or courier or by e-mail or other means of electronic communication;
 - (b) a Creditor who receives a Notice of Revision or Disallowance and wishes to dispute it shall, within ten (10) days of the receipt of Notice of Revision or Disallowance, file a motion with this Court appealing

said Notice of Revision or Disallowance, and serve a copy of such motion to the Petitioners, the Monitor and their respective attorneys;

- (c) unless otherwise authorized by this Court, if the Creditor does not file a motion appealing a Notice of Revision or Disallowance within the delay provided for above, such Creditor shall be deemed to have accepted the value of its Proven Claim as set out in the Notice of Revision or Disallowance; and
- (d) if the Creditor appeals the Notice of Revision or Disallowance, or where the Claim has not been finally determined prior to the date of any Creditor's Meeting, the Monitor, in conjunction with the Petitioners, will, if possible at this moment, determine the amount of the Voting Claim;

NOTICE OF CREDITORS' MEETING

[13] **ORDERS** that, as soon as practicable, but no later than May 21, 2010, the Monitor shall send to each Creditor, by ordinary mail, courier, facsimile or email at the address appearing on each Creditor's Proof of Claim or such other address subsequently provided by a Creditor to the Monitor and publish on the Website, the following documents (collectively, the "**Meeting Materials**"):

- (a) a notice of the Creditors' Meeting, substantially in the form attached hereto as *Schedule C*, which is hereby approved (the "**Notice of Creditors' Meeting**");
- (b) the Plan; and
- (c) a copy of the proxy form and the voting form substantially in the form attached hereto as *Schedule D*, which is hereby approved;

[14] **ORDERS** that the publication and the mailing of the Meeting Materials in accordance with paragraph [13] hereof, shall constitute good and sufficient service of the Meeting Materials on all Persons who may be entitled to receive them, or who may wish to be present in person or by proxy at the Creditors' Meeting, or who may wish to receive notice or copy of or appear in these proceedings, and no other form of notice or service need be made on such Persons, and no other document or material need be served on such Persons in respect of these proceedings;

CREDITORS' MEETING

- [15] **ORDERS** that the Petitioners are hereby authorized to call, hold and conduct the Creditors' Meeting on June 1, 2010, in Bromont, Quebec for the purpose of considering and, if deemed advisable, approving the Plan, unless the Petitioners or the Creditors decide by resolution carried by the majority of votes (one vote for each dollar of every Voting Claim) to postpone the Creditors' Meeting;
- [16] **ORDERS** that the only Persons entitled to attend and participate in the Creditors' Meeting are Creditors with Voting Claims and their proxy holders, representatives of the Petitioners and members of the boards of directors, representatives of the Monitor, the Chair, and their respective legal and financial advisors, any other Person being admitted to the Creditors' Meeting only on invitation of the Chair;
- [17] **ORDERS** that the quorum required at the Creditors' Meeting shall be one Creditor present at such meeting in person or by proxy, and that if the requisite quorum is not met at the creditors' meeting, the Creditors' Meeting shall be adjourned by the Chair to such time and place as the Chair deems necessary or desirable;
- [18] **ORDERS** that the only Persons entitled to vote at the Creditors' Meeting shall be Creditors with Voting Claims and their proxy holders, each Creditor with a Voting Claim being entitled to a number of votes equal to the value in dollars of its Voting Claim(s) as determined in accordance with this Order, which Voting Claim(s) shall not include fractional numbers and shall be rounded down to the nearest Canadian dollar;
- [19] **ORDERS** that any proxy that any Creditor wishes to submit in respect of the Creditors' Meeting (or any adjournment thereof) must be substantially in the form attached hereto as *Schedule D* (or in such other form acceptable to the Monitor or the Chair) and be received by the Monitor before the beginning of the Creditors' Meeting;
- [20] **ORDERS** that the results of any and all votes conducted at the Creditors' Meeting shall be binding on all Creditors, whether or not any such Creditor is present or votes at the Creditors' Meeting;
- [21] **ORDERS** that the Monitor shall preside as the chair of the Creditors' Meeting (the "**Chair**") and, subject to any further order of this Court, shall decide all matters relating to the conduct of the Creditors' Meeting subject to the right of the Petitioners and any Creditor to appeal to this Court from any decision of the Chair of any such decision on or before the date of the sanction hearing to

seek the approval of the Plan, provided that an objection is lodged with the Chair at the Creditors' Meeting;

- [22] **ORDERS** that, at the Creditors' Meeting, the Chair is authorized to direct a vote with respect to the Plan, and any amendments thereto as the Petitioners and the Monitor may consider appropriate;
- [23] **ORDERS** that the Chair is authorized to adjourn the Creditors' Meeting on one or more occasions to such time(s), date(s) and place(s) as the Chair deems necessary or desirable (without the need to first convene the Creditors' Meeting for the purpose of any adjournment);
- [24] **ORDERS** that the Monitor shall appoint a secretary at the Creditors' Meeting, and may appoint scrutineers to take attendance, to determine quorum, and to supervise and tabulate votes cast at the Creditors' Meeting;
- [25] **ORDERS** that the Monitor shall supervise and certify the tabulation of votes cast at the Creditors' Meeting, and shall report to the Court at the sanction hearing as to the effect, if any, of the Monitor's determination of Creditors' Voting Claims pursuant to subparagraph [12](d) hereof on the outcome of the vote held at the Creditors' Meeting;

EVIDENCE THAT CLAIM WAS PAID

- [26] **ORDERS** that, should the Monitor receive evidence satisfactory to it that the Claim of a Creditor was paid in part or in full by the Petitioners or other party prior to the Determination Date, such Claim shall be reduced or deleted, for the purposes of distributions under the Plan;

NOTICES AND COMMUNICATIONS

- [27] **ORDERS** that any notice or other communication to be given under this Order by a Creditor to the Monitor or the Petitioners shall be in writing in substantially the form, if any, provided for in this Order and will be sufficiently given only if given by mail, fax, courier or other means of electronic communication addressed to:

Monitor: **Samson/Bélair Deloitte & Touche Inc.**
Attention: Jean-François Nadon
Fax: 514 390-4103
Email: jnadon@deloitte.ca

Monitor' counsel: **Fasken Martineau Dumoulin LLP**
Attention: Luc Béliveau and Luc Morin
Fax: 514 397-4336
Email: lbeliveau@fasken.com

Petitioners: **McCarthy Tétrault LLP**
Attention: Alain N. Tardif and Jocelyn Perreault
Fax: 514 875-6246
Email: atardif@mccarthy.ca
jperreault@mccarthy.ca

- [28] **ORDERS** that any document sent by the Monitor pursuant to this Order may be sent by ordinary mail, registered mail, courier, fax, or e-mail, and Creditors shall be deemed to have received any document sent pursuant to this Order two (2) Business Days after the document is sent by mail and one (1) Business Day after the document is sent by courier, fax or e-mail, provided however that documents shall not be sent by ordinary or registered mail during a postal strike or work stoppage of general application;

V. AID AND ASSISTANCE OF OTHER COURTS

- [29] **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

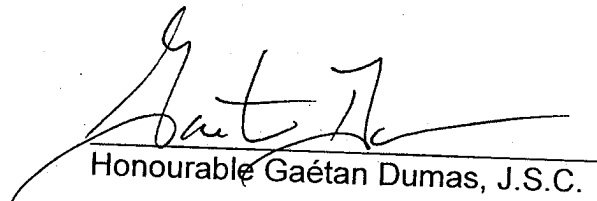
- [30] **ORDERS** that the Monitor shall use reasonable discretion as to the adequacy of completion and execution of any document completed and executed pursuant to this Order and, where the Monitor is satisfied that any matter to be proven under this Order has been adequately proven, the Monitor may waive strict compliance with the requirements of this Order as to the completion and execution of documents;

- [31] **ORDERS** that references in this Order to the singular include the plural, to the plural include the singular and to any gender include the other gender;
- [32] **ORDERS** that the Monitor may apply to this Court for advice and direction in connection with the discharge or variation of its powers and duties under this Order;
- [33] **ORDERS** that for the purposes of this Order, all Claims that are denominated in a foreign currency shall be converted to Canadian dollars at the nominal noon exchange rate of the Bank of Canada on the Determination Date;
- [34] **DECLARES** that this Order shall have full force and effect in all of the provinces and territories in Canada;
- [35] **ORDERS** the provisional execution of this Order notwithstanding any appeal and without the necessity of furnishing any security;
- [36] **THE WHOLE** without costs.

Copie certifiée conforme

Monique Hebert

Gyffere adjointe Cour Supérieure


Honourable Gaétan Dumas, J.S.C.