

**SUPERIOR COURT
(Commercial Division)**

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

T R A N S L A T I O N

NO.: 500-11-036124-093

DATE: February 9, 2010

PRESENT: THE HONOURABLE JOËL A. SILCOFF, J.C.S.

**IN THE MATTER OF THE ARRANGEMENT OF PERBERCAN INC. IN
ACCORDANCE WITH SECTION 192 OF THE CANADA BUSINESS
CORPORATIONS ACT (R.S., 1985, c. C-44),**

PEBERCAN INC., a corporation incorporated under the *Canada Business Corporations Act*, with its head office at 750 boulevard Marcel-Laurin, Suite 106, in Montreal (Saint-Laurent), Quebec H4M 2M4

Applicant

and

SAMSON BÉLAIR/DELOITTE & TOUCHE INC., a body corporate duly incorporated under the laws of Canada, with its head office at 1 Place Ville-Marie, Suite 3000, in Montreal, Quebec H3B 4T9, in its capacity as monitor designated by order of the Court on July 6, 2009;

and

THE DIRECTOR appointed under section 260 of the *Canada Business Corporations Act*, with its offices at 365 Laurier Street West, 9th floor, Ottawa, Ontario, K1A 0C8

-and-

THE DEPUTY MINISTER OF REVENUE OF QUÉBEC, 3 Complexe Desjardins, Section D186LC, Montreal, Quebec H5B 1A7

-and-

ATTORNEY GENERAL OF CANADA, representing Her Majesty the Queen in Right of Canada (Minister of National Revenue), Complexe Guy-Favreau, East Tower, 9th floor, 200 René-Lévesque Blvd. West, Montreal, Quebec H2Z 1X4

Mis-en-cause

ORDER
Canada Business Corporations Act (“CBCA”),
Sections 192 and 217

- [1] The Court has heard the motion of Pebercan Inc. (the “**Applicant**”) for approval of the provisions that the company intends to maintain in order to honour its obligations and for authorization to distribute the remainder of its assets among the holders of its common shares. Once this has been done, the Applicant also requests permission to cancel its capital stock, at which point its common shares will be delisted and the powers of the shareholders and directors of the company will be vested in the *mise-en-cause* Samson Bélair/Deloitte & Touche Inc. in its capacity as monitor designated by order of the Court on July 6, 2009 (the “**Monitor**”);
- [2] All of the foregoing operations are part of the Applicant’s arrangement that the Court approved by order on June 1, 2009 (the “**Arrangement**”);
- [3] **IN VIEW OF** the content of the *Motion of Pebercan Inc. for Authorization of a First Distribution to Its Shareholders and Complementary Findings* (the “**Motion**”) as well as the exhibits and the affidavit of Christophe Ranger dated February 1, 2010 produced in support thereof;
- [4] **IN VIEW OF** the notices of presentation of the motion that were given and the absence of any opposition;
- [5] **IN VIEW OF** the Monitor’s first report dated September 19, 2009 on the Claims Process attached to the Court order dated July 6, 2009 (“**First Monitor’s Report**”) and the Monitor’s second report dated January 26, 2010 (the “**Second Monitor’s Report**”);

- [6] **WHEREAS** in the Second Monitor's Report, and through its representative at the hearing on January 29, 2010, the Monitor expresses the opinion that provisions for a total amount of \$13,673,620 are sufficient to meet the Applicant's obligations until it is dissolved;
- [7] **WHEREAS** the tax authorities represented at the hearing have informed the Court that they have entered into satisfactory arrangements with the Applicant for the fulfillment of the latter's tax obligations, arrangements that the Court is able to approve under the terms of this order;
- [8] **WHEREAS** the Director appointed under section 260 of the CBCA was informed of the presentation of the Applicant's motion and its staff determined that it did not have to appear or be heard at the hearing for the rendering of this order;
- [9] **WHEREAS** it is expedient to order that this order be executed immediately to avoid any further delay in the liquidation process of the Applicant;
- [10] **FOR THESE REASONS, THE COURT:**
- [11] **ALLOWS** the motion in accordance with this order;
- [12] **DECLARES** the notices of presentation of the motion valid and sufficient;
- [13] **ACKNOWLEDGES** the Second Monitor's Report dated January 26, 2010;
- [14] **DECLARES**, on the strength of the Second Monitor's Report and the testimony of the Monitor's representative at the hearing on January 29, 2010, that provisions for a cumulative amount of \$13,673,620 (the "**Total Provisions**") appear to be adequate for the payment or discharge of the Applicant's obligations, whether liquidated, unliquidated, future or contingent;

- [15] **ACKNOWLEDGES** the acceptance by the Canada Revenue Agency (the “**CRA**”) of the bank letter of guarantee in the amount of \$5,000,000 emanating from a Canadian charter bank and having terms and conditions acceptable to the CRA, including, among other things, the fact that it is redeemable in tranches upon receipt by the issuing bank of a request for payment of any notice of assessment issued by the CRA, in order to guarantee payment of the amount for which the Applicant will or can be reasonably expected to become liable under the *Income Tax Act* (Canada) (R.S.C. 1985, c. 1 (5th supp.)) (the “**ITA**”) at or before the time the distribution among its shareholders that the Court authorizes under the terms of this order is made;
- [16] **AUTHORIZES** the Applicant to provide the CRA with a bank letter of guarantee in the amount of \$5,000,000 emanating from a Canadian charter bank and having terms and conditions acceptable to the CRA, including, among other things, the fact that it is redeemable in tranches upon receipt by the issuing bank of a request for payment of any notice of assessment issued by the CRA, against issuance by the Minister of Revenue Canada of the certificate specified in subsection 159(2) of the ITA for the purposes of the first distribution to the shareholders that the Court authorizes under the terms of this order, and for no other purpose;
- [17] **DECLARES** that the purpose of the bank letter of guarantee that the Applicant is authorized to deliver to the CRA is not to provide for the remittance of withholding tax on dividends payable to non-resident shareholders within the meaning of the ITA under Part XIII of the ITA, nor to release the persons charged with the payment of such dividends from their personal liability, as applicable, in the event of failure to withhold such taxes;

- [18] **ACKNOWLEDGES** the acceptance by the Ministère du Revenu du Québec (the “**MRQ**”) of a letter of guarantee in the amount of \$4,400,000 emanating from a Canadian charter bank and having terms and conditions acceptable to the MRQ, including, among other things, the fact that it is redeemable in tranches upon receipt by the issuing bank of a request for payment of any notice of assessment issued by the MRQ, in order to guarantee payment of the amount for which the Applicant will or can be reasonably expected to become liable at or before the time the distribution to its shareholders that the Court authorizes under the terms of this order is made;
- [19] **AUTHORIZES** the Applicant to provide the MRQ with a bank letter of guarantee in the amount of \$4,400,000 emanating from a Canadian charter bank and having terms and conditions acceptable to the MRQ, including, among other things, the fact that it is redeemable in tranches upon receipt by the issuing bank of a request for payment of any notice of assessment issued by the MRQ, against issuance by the Ministre du Revenu du Québec of the certificate specified in section 14 of *An Act respecting the ministère du Revenu* (the “**AMR**”) for the purposes of the first distribution to the shareholders that the Court authorizes under the terms of this order, and for no other purpose;
- [20] **DECLARES** that neither the Claims process held in accordance with the preceding Court order, nor the proofs of claim produced by the CRA and the MRQ under that process, nor the issuance of bank letters of guarantee to provide for the Applicant's obligations to the CRA and to the MRQ, nor the issuance of certificates under section 159 ITA and section 14 AMR affects the right of the CRA and the right of the MRQ to issue assessments under the terms of the ITA, the *Excise Tax Act*, the *Taxation Act* (Quebec) and any other legislation that the CRA and the MRQ are responsible for applying, or the Applicant's right to oppose or appeal any such assessment in accordance with applicable legislation;
- [21] **DECLARES** that any dispute in respect of the amounts of the claims of the CRA and the MRQ will be resolved through notices of objection and through the

appeal of any notice of assessment or reassessment, which will remain the exclusive jurisdiction of the authorities designated to hear and rule on such objections and appeals in accordance with applicable tax legislation;

- [22] **DECLARES** that nothing in this order affects the right of the tax authorities to avail themselves of all the remedies and recourses available to them under the terms of the tax legislation in order to recover the amounts payable by the Applicant or that the Applicant is required to remit to them;
- [23] **ORDERS** the Applicant to give the tax authorities at least five (5) business days' prior notice of the presentation of any subsequent motion for authorization of any other distribution to its shareholders under the terms of the Arrangement;
- [24] **DECLARES** that of the Total provisions, an amount of \$1,628,225 be held separately to provide for payment of the Monitor's fees and expenses, those of the Monitor's attorneys, those of the Applicant's attorneys and those of the other professional advisors that the Monitor deems appropriate to hire, and for no other purpose, except with prior permission of the Court and under conditions that it deems appropriate to set;
- [25] **AUTHORIZES** the Applicant, on filing of arrangement clauses to this effect and issuance of the certificate from the Director under paragraph 192(7) CBCA, to distribute to the holders of common shares of the capital stock of the Applicant (the "**Shares**"), at the closing of the ledger on the day set by the Applicant pursuant to established practice, a maximum amount of \$76,459,152, i.e., approximately \$1.01 per diluted Share (the "**First Distribution**") and that the First Distribution take place as payment pro tanto of a reduction to the stated capital account held for the Shares carried out for an amount of \$78,995,950;

- [26] **DECLARES**, subject to the rights that may be asserted by the tax authorities should the certificates specified in subsection 159(2) ITA and in section 14 of the AMR be issued on the basis of factual misrepresentations or omissions under the still-to-be-completed audit, that once carried out, the First Distribution, shall no longer meet the debts and obligations of the Applicant;
- [27] **AUTHORIZES** the Applicant to file with the Director arrangement clauses providing for the cancellation of all shares of the capital stock of the Applicant, including the cancellation of the outstanding Shares, the cancellation of all stock options and the cancellation of all other rights to receive shares, if any remain, at the time set out in such arrangement clauses;
- [28] **ORDERS** that, effective the second business day following the date appearing on the certificate from the Director giving effect to the arrangement clauses cancelling the Applicant's capital stock, all the powers of the directors and shareholders be vested (the "**Vesting**") in the Monitor;
- [29] **DECLARES** that the Monitor will take whatever measures that it deems appropriate to continue to liquidate and ultimately dissolve the Applicant, pursuant to the Arrangement;
- [30] **DECLARES** that as of the Vesting, the Monitor shall have the right to take possession and ensure the safekeeping of all property, books and records of the Applicant;
- [31] **ORDERS** the Applicant, its directors, officers, employees and agents to deliver into the Monitor's possession all property, books and records of the Applicant as of the Vesting;

[32] **DECLARES** that as of the Vesting, the Monitor will be required to:

- a) Keep track of the Applicant's funds received and paid;
- b) Keep lists of the Applicant's former Shareholders of record on the day the cancellation of the Shares takes effect (the "**Former Shareholders**"), creditors and other persons with claims against the Applicant;
- c) If, at any time whatsoever, the Monitor ascertains that the Applicant is incapable of paying or of adequately providing for the fulfillment of its obligations, approach the Court for instructions;
- d) Once the final account of the Monitor is approved by the Court, distribute any remaining property of the Applicant among the Shareholders in accordance with their respective rights;

[33] **DECLARES** that, as of the Vesting, the Monitor shall be at liberty, acting in such capacity or on behalf of the Applicant, to:

- a) Retain the services of lawyers, accountants, appraisers and any other professional advisors;
- b) Initiate, defend and participate in any civil, criminal or administrative proceeding;
- c) Ensure the conduct of the Applicant's affairs to the extent necessary for the furtherance of its orderly liquidation;
- d) Deposit, in whole or in part, the Applicant's funds in a bank account in the Monitor's name, in trust for the Applicant;
- e) Take any action and execute any document;
- f) Borrow money using the Applicant's property as security;
- g) Settle and arbitrate claims of or against the Applicant;

- h) Retain the services of the current officers of the Applicant, assign them such positions and duties as it deems appropriate and agree on their compensation;
- i) Do whatever it deems necessary or simply useful to complete the liquidation of the Applicant, distribute its assets and dissolve it;

[34] **DECLARES** that the written resolutions that the Monitor deems appropriate to sign in exercising the powers of the Applicant's shareholders and directors shall be resolutions of the shareholders and directors of the Applicant within the meaning of sections 142 and 117 CBCA, as applicable;

[35] **DECLARES** that less than one year after the Vesting, the Monitor will be required to approach the Court:

- a) For approval of its final account and for an order allowing it to distribute the remainder of the Applicant's property to the Former Shareholders in accordance with their respective rights and to file additional arrangement clauses having the effect of dissolving the Applicant; or
- b) For the granting of an extension of the time allotted to it to take the foregoing actions, with reasons in support;

[36] **DECLARES** that the Monitor's compensation will be determined pursuant to the written agreement entered into with the Applicant and submitted in support of the motion under the identifier **RPD-2**;

[37] **DECLARES** that the Monitor's fees and expenses are payable from time to time from the property of the Applicant, subject to approval of the Monitor's final account by the Court;

[38] **DECLARES** that the Monitor will be required to:

- a) Keep the publicly accessible website that the Monitor has set up for the Applicant's liquidation active (the "**Monitor's Website**");
- b) Provide to the Court and display on the Monitor's Website notice of the occurrence of events that may reasonably be expected to have a significant impact on the timing and amount of any distribution to the Former Shareholders, unless the Monitor has reasonable grounds to believe that disclosing these facts could adversely affect the interests of the Applicant and those of the Former Shareholders;
- c) Display on the Monitor's Website:
 - i) This order and any subsequent order of the Court in connection with the Arrangement within three (3) business days of their communication to the Monitor;
 - ii) Prior notice of any motion of the Monitor or the Applicant with the Court at least three (3) business days before it is presented;
- d) File with the Court, send to the Director and display on the Monitor's Website, on a quarterly basis, financial information in the form provided in schedule "A" of this order;

[39] **DECLARES** that the Monitor is at liberty to approach the Court for instructions on any matter relating to the liquidation and dissolution of the Applicant should the Monitor deem it appropriate;

[40] **ORDERS** the provisional execution of this order, notwithstanding appeal;

[41] **THE WHOLE** without costs.

(s) Joël A. Silcoff, J.C.S.
Joël A. Silcoff, J.C.S.

Me Serge Guérette
Fasken Martineau DuMoulin S.E.N.C.R.L., s.r.l.
Attorney for the Applicant

Me Stephen Raicek
de Grandpré Chait
Attorneys for the Monitor

Me Chantal Comtois
Justice Canada
Attorney for the Attorney General of Canada

Me Sylvie Sarrazin
Larivière, Meunier
Attorneys for the Deputy Minister of Revenue for Québec

SCHEDULE A

Part I: Statement of Revenue and Expenses and Cash Position for the period of _____ to _____

Revenue:	\$ xxx
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Expenses:	
Expenditures	\$ xxx
Professional fees	\$ xxx
Other	\$ xxx
	\$ xxx
	\$ xxx

Net revenue (expenses) for the period:	\$ xxx
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Cash and short-term investment at beginning:	\$ xxx
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Cash and short-term investments at end:	\$ xxx
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Part II – Estimate of expenses to be incurred and provisions (unsettled claims) as at _____

Estimate of expenses to be incurred until dissolution:	\$ xxx
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Provisions taken for claims in dispute:	\$ xxx
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Total expenses to be incurred and provisions for claims in dispute:	\$ xxx
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