

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:

XEBEC HOLDING USA INC., *et al.*,

Debtors in a foreign proceeding.¹

Chapter 15

Case No. 22-10934 (KBO)

Joint Administration Requested

**ORDER GRANTING FINAL RELIEF RECOGNIZING
AND ENFORCING DIP FINANCING AUTHORIZED UNDER AMENDED
AND RESTATED CCAA ORDER**

Upon the motion (the “**Motion**”)² of Xebec Adsorption Inc., in its capacity as authorized foreign representative (the “**Foreign Representative**”) for the above-captioned debtors (collectively, the “**Debtors**”), in a proceeding (the “**Canadian Proceedings**”) commenced under Canada’s Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), and pending before the Superior Court of Québec, in the Province of Québec, District of Montréal (the “**Canadian Court**”), seeking entry of an order granting additional relief (this “**Order**”) pursuant to sections 105(a), 364, and 1521 of title 11 of the United States Code, as amended from time to time (the “**Bankruptcy Code**”): (a) recognizing and enforcing in the United States, on a final basis, the terms, conditions, and provisions of that certain Amended and Restated Initial Order of the Canadian Court dated October 20, 2022 (the “**Amended and Restated CCAA Order**”), a copy of which is attached as Exhibit B to the Motion, (b) granting certain protections

¹ The Debtors in the chapter 15 proceedings and the last four digits of their federal tax identification numbers are: Xebec Adsorption Inc. (0228), Xebec RNG Holdings Inc. (N/A), Applied Compression Systems Ltd. (N/A), Compressed Air International Inc. (N/A), Xebec Holding USA Inc. (8495), Enerphase Industrial Solutions Inc. (1979), CDA Systems, LLC (6293), Xebec Adsorption USA, Inc. (0821), The Titus Company (9757), Nortekbelair Corporation (1897), XBC Flow Services – Wisconsin Inc. (7493), California Compression, LLC (4752), and Xebec Systems USA LLC (4156). The location of the Debtors’ corporate headquarters and the Debtors’ foreign representative is: 700-1130 Sherbrooke Street West, Montreal, Quebec H3A 2M8.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion or the Amended and Restated CCAA Order (as defined herein), as applicable.

afforded by the Bankruptcy Code, including under section 364(c), 364(d), and 364(e) of the Bankruptcy Code, and (c) granting such other and further relief as this Court deems just and proper; and it appearing that this Court has jurisdiction to consider the Motion pursuant to sections 157 and 1334 of title 28 of the United States Code; venue being proper before the Court pursuant to 28 U.S.C. § 1410; and this Court having reviewed the Motion and having considered the statements of counsel with respect to the Motion at a hearing before this Court on November 1, 2022; and this Court having entered, on November 2, 2022, the *Order Granting Interim Relief Recognizing and Enforcing DIP Financing Authorized Under Amended and Restated CCAA Order* [Docket No. 42] (the “**Interim Order**”), setting the deadline for filing responses, answers, or objections to the Motion for November 21, 2022 at 4:00 p.m. (prevailing Eastern Time) (the “**Objection Deadline**”) and setting a final hearing for November 28, 2022 at 9:30 a.m. (prevailing Eastern Time) (the “**Final Hearing**”); and the Court having determined that appropriate and timely notice of the filing of the Motion, the Interim Order, the Objection Deadline, and the Final Hearing having been given; it appearing that the relief requested in the Motion is necessary and beneficial to the Debtors; and no other or further notice being necessary or required; and this Court having determined that the legal and factual bases set forth in the Motion, and all other pleadings and papers in these cases establish just cause to grant the relief ordered herein, and no objections or other responses having been filed that have not been overruled, withdrawn, or otherwise resolved, and after due deliberation therefor;

THIS COURT HEREBY FINDS AND DETERMINES THAT:

A. The findings and conclusions set forth herein constitute this Court’s findings of fact and conclusions of law pursuant to rule 7052 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as

such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P). Venue for this proceeding is proper before this Court pursuant to 28 U.S.C. § 1410.

C. The Foreign Representative is the duly appointed “foreign representative” of the Debtors within the meaning of section 101(24) of the Bankruptcy Code.

D. This Court entered an order on October 27, 2022 recognizing, among other things, that the Canadian Proceedings constitute “foreign main proceedings” as defined in section 1502(4) of the Bankruptcy Code (the “**Recognition Order**”).

E. The Amended and Restated CCAA Order, including Paragraphs 36-43 of the Amended and Restated CCAA Order, authorizes entry into the Interim Financing Documents, pursuant to which, among other things: (i) the Debtors may borrow from the Interim Lenders amounts not exceeding CAD\$3,000,000.00 (the “**DIP Loans**”); (ii) all Property³ of the Debtors shall be subject to a charge and security for an aggregate amount of \$3,600,000.00 in favor of the Interim Lenders (the “**DIP Charge**”);⁴ and (iii) the Debtors shall pay all amounts due and owing to the Interim Lenders, including the Interim Lender Expenses, and shall otherwise perform all obligations due and owing to the Interim Lenders under the Interim Financing Documents.

³ “Property” means the Debtors’ present and future assets, right, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof. *See* Amended and Restated CCAA Order, ¶ 20.

⁴ The DIP Charge “shall subsist without necessity of any publication, registration, recording, filing or perfection and shall have the priority established in paragraphs 61 and 62” of the Amended and Restated CCAA Order. *See* Amended and Restated CCAA Order, ¶ 39.

F. On or about September 29, 2022, the Canadian Court executed that certain First Day Initial Order (the “**Initial Canadian Order**”) providing, among other things, for a Directors and Officers’ indemnification and charge in the amount of CAD\$2,200,000.00 (the “**Initial D&O Charge**”), which the Canadian Court increased to CAD\$3,700,000.00 by the Amended and Restated CCAA Order.

G. The Initial Canadian Order also provided for the Administration Charge in the amount of CAD\$250,000.00 (collectively with the Initial D&O Charge, the “**Initial Canadian Post-Petition Secured Claims**”), which the Canadian Court increased to CAD\$900,000.00 by the Amended and Restated CCAA Order.

H. The Initial Canadian Post-Petition Secured Claims were recognized and given full force and effect in the United States pursuant to the Recognition Order.

I. The Foreign Representative has demonstrated that the incurrence of indebtedness under the Interim Financing Documents, as authorized by the Amended and Restated CCAA Order, is necessary to prevent irreparable harm to the Debtors and their affiliates because, without such financing, they will be unable to continue operations, which will significantly impair the value of the Debtors’ assets.

J. The Foreign Representative has demonstrated that the terms of the Interim Financing Documents, as approved in the Amended and Restated CCAA Order, are fair and reasonable and were entered into in good faith by the Debtors and the Interim Lenders and that the Interim Lenders would not have extended financing without the protections provided by sections 364 of the Bankruptcy Code, made applicable by section 1521(a)(7) of the Bankruptcy Code. The Foreign Representative has demonstrated that the terms of the Interim Financing Documents are reasonable under the circumstances.

K. The Foreign Representative is further entitled to the discretionary relief expressly set forth in section 1521(a) of the Bankruptcy Code.

L. The relief granted herein is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the United States, and warranted pursuant to section 1521 of the Bankruptcy Code.

BASED ON THE FOREGOING FINDINGS OF FACT AND AFTER DUE DELIBERATION AND SUFFICIENT CAUSE APPEARING THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is Granted as set forth herein.
2. The Final Hearing is hereby cancelled.
3. The terms of the Interim Financing Documents and DIP Loans as approved in the Amended and Restated CCAA Order shall be given full force and effect as to the Debtors and their property in the United States on a final basis.
4. Pursuant to section 1521 of the Bankruptcy Code, the Amended and Restated CCAA Order, and the transactions consummated or to be consummated thereunder, including without limitation, entry into and performance under the Interim Financing Documents and DIP Loans, shall be granted and given full force and effect in the United States to the same extent that they are given effect in Canada, and each is binding on all creditors of the Debtors and any of their successors or assigns.
5. Pursuant to sections 1521 and 364 of the Bankruptcy Code, to the extent authorized under the Amended and Restated CCAA Order, the Court grants, on a final basis, the DIP Charge on all of the Debtors' Property located in the United States on the same priority set forth in the Amended and Restated CCAA Order.

6. Upon entry of this Order, the Foreign Representative and the Debtors, as applicable, shall comply with the terms, conditions, and provisions of the Amended and Restated CCAA Order including, without limitation, the provisions relating to the Interim Financing Documents, DIP Loans and the DIP Charge.

7. Without further order of this Court, to the extent authorized under the Amended and Restated CCAA Order, and to promote cooperation between jurisdictions in cross-border insolvencies, the Debtors are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees, and other documents and filings, and to pay all fees and expenses, including the Interim Lender Expenses, and to perform all other obligations, under the Interim Financing Documents.

8. The Interim Financing Documents and the DIP Facility have been negotiated in good faith between the Debtors and the Interim Lenders. Any financial accommodations made to the Debtors by the Interim Lenders pursuant to the Amended and Restated CCAA Order and the Interim Financing Documents shall be deemed to have been made by the Interim Lenders in good faith, as that term is used in section 364(e) of the Bankruptcy Code. Accordingly, pursuant to sections 364(e), 1521(a)(7), and 105(a) of the Bankruptcy Code, section 364(e) of the Bankruptcy Code hereby applies for the benefit of the Interim Lenders, and the validity of the indebtedness, and the priority of the liens in respect of the DIP Charge authorized by the Amended and Restated CCAA Order made enforceable in the United States by this Order, shall not be affected by any reversal or modification of this Order on appeal or the entry of an order denying recognition of the CCAA Proceeding pursuant to section 1517 of the Bankruptcy Code.

9. This Order shall be sufficient and conclusive notice and evidence of the grant, validity, perfection, and priority of the liens granted to the Interim Lenders in the Amended and

Restated CCAA Order without the necessity of filing or recording this Order or any financing statement, mortgage, or other instrument or document which may otherwise be required under the law of any jurisdiction; provided that the Debtors are authorized to execute, and the Interim Lenders under the DIP Facility may file or record, any financing statements, mortgages, other instruments or any other Interim Financing Documents to further evidence the liens authorized, granted, and perfected hereby and by the Amended and Restated CCAA Order.

10. Notwithstanding any provision in the Bankruptcy Rules to the contrary: (a) this Order shall be effective immediately and enforceable upon entry; (b) neither the Foreign Representative nor the Interim Lenders are subject to any stay in the implementation, enforcement, or realization of the relief granted in this Order; and (c) the Foreign Representative is authorized and empowered, and may in its discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of this Order.

11. Notwithstanding any stay, injunction or similar relief granted in these chapter 15 cases, the Interim Lenders are authorized to exercise all remedies and take any and all enforcement steps permitted under the Amended and Restated CCAA Order, subject to the provisions of the Amended and Restated CCAA Order, including paragraph 42 thereof.

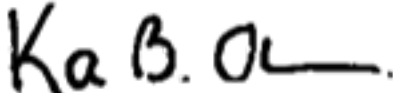
12. The Foreign Representative is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

13. This Court may communicate directly with, or request information or assistance directly from, the Canadian Court or the Foreign Representative, subject to the rights of a party in interest to notice and participation.

14. This Court shall retain jurisdiction with respect to the enforcement, amendment or modification of this Order, any requests for additional relief or any adversary proceeding or

contested matter brought in and through the chapter 15 case, and any request by an entity for relief from the provisions of this Order, for cause shown, that is properly commenced and within the jurisdiction of this Court.

Dated: November 22nd, 2022
Wilmington, Delaware


KAREN B. OWENS
UNITED STATES BANKRUPTCY JUDGE