

**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)

Jointly Administered

**DECLARATION OF SANDRA ABITAN, AS CANADIAN COUNSEL TO
THE DEBTORS, IN SUPPORT OF MOTION FOR ENTRY OF AN ORDER
(A) APPROVING NOTICING PROCEDURES FOR DEBTORS' MOTION FOR
(I) APPROVAL OF THE SALE OF DEBTORS' ASSETS; AND (II) RECOGNITION
AND ENFORCEMENT OF CANADIAN COURT ORDER APPROVING THE SALE;
(B) SETTING A SALE HEARING; AND (C) GRANTING RELATED RELIEF**

I, Sandra Abitan, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury under the laws of the United States, as follows:

1. I am the Managing Partner of the Montréal office of Osler, Hoskin & Harcourt LLP (“**Osler**”). My practice is dedicated to restructuring and insolvency matters. I regularly advise and represent debtors, court-appointed officers, secured lenders, unsecured creditors and distressed asset purchasers, including in proceedings under the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). I have been retained as Canadian counsel to the above-captioned debtors (the “**Debtors**”), in Canadian proceedings (the “**Canadian Proceeding**”) commenced under the CCAA and pending before the Superior Court of Québec (Commercial Division) in the District of Montréal (the “**Canadian Court**”). I am authorized to provide this declaration on behalf of the Debtors.

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, Montréal, Québec H3A 2M8.

2. I submit this declaration (“**Declaration**”) in support of the *Motion for Entry of an Order (A) Approving Procedures for Debtors’ Motion for (I) Approval of the Sale of Debtors’ Assets; and (II) Recognition and Enforcement of Canadian Court Order Approving the Sale; (B) Setting a Sale Hearing; and (C) Granting Related Relief* (the “**Noticing Procedures Motion**”), filed contemporaneously herewith. The Noticing Procedures Motion seeks entry of an order approving noticing procedures for a motion to approve the sale of the Debtors’ assets under to 11 U.S.C. § 363 and for recognition and enforcement of a Canadian Court order approving such sale; (b) setting a sale hearing; and (c) granting related relief.

3. In preparing this Declaration, I reviewed the (a) Noticing Procedures Motion; (b) the relevant filings in these chapter 15 cases and in the Canadian Proceeding; and (c) the relevant provisions of the CCAA as they relate to cross-border insolvencies or these chapter 15 cases.

4. All facts set forth in this Declaration are based on: (a) my knowledge; (b) my review of relevant documents; (c) my opinion based upon my experience and knowledge of Canadian law and the Debtors’ operations; or (d) information provided to me by the Debtors or their advisors. If called upon to testify, I could and would testify to the facts set forth herein.

5. This Declaration contains statements of legal opinion or statements of fact. Where the matters stated in this Declaration are statements of legal opinion, such statements are based upon my experience as a practicing lawyer admitted and licensed to practice in the Province of Québec, Canada.

6. I previously submitted that certain *Declaration of Sandra Abitan as Canadian Counsel to the Debtors in Support of Motion for Recognition of Foreign Main Proceeding and Request for Certain Related Relief* [Docket No. 4], which I incorporate herein by reference.

Capitalized but undefined terms shall have the meanings set forth in the Noticing Procedures Motion.

THE CANADIAN PROCEEDING

7. On September 29, 2022, pursuant to an application made by the Debtors in the Canadian Proceeding, the Canadian Court entered: (a) the First Day Initial Order; and (b) the Bidding Procedures Order. A copy of the Initial CCAA Order was attached as Exhibit D to the Initial Recognition Motion. A copy of the CCAA Bidding Procedures Order is attached as Exhibit B to the Noticing Procedures Motion.

8. Pursuant to the Initial CCAA Order, the Canadian Court, among other things: (a) ordered a broad stay of proceedings in respect of the Debtors and their directors and officers; (b) appointed the Monitor in the Canadian Proceeding; (c) declared that Québec is the “centre of main interest” of the Debtors, and, accordingly, authorized the Debtors to apply to any other court, tribunal, regulatory, administrative, or other body, wherever located, for orders to recognize and assist in carrying out the terms of the Initial CCAA Order and any subsequent orders rendered by the Canadian Court in the context of the Canadian Proceeding, including orders under chapter 15 of the Bankruptcy Code.

9. On November 28, 2022, the Canadian Court entered an order extending the Canadian Stay until February 3, 2023.

THE SALE PROCESS

10. Pursuant to the CCAA Bidding Procedures Order, the Canadian Court, among other things: (a) approved the Bidding Procedures;² and (b) approved the engagement of the Financial Advisor to serve as the Debtors’ financial advisor in the context of the sale process

² The Bidding Procedures are attached as Schedule A to the CCAA Bidding Procedures Order.

11. The Bidding Procedures are intended to establish a clear and open process for the solicitation, receipt, and evaluation of bids on a timeline that will provide parties with sufficient time and information to submit competitive bids.

12. The CCAA does not require notice to all creditors of sales of a debtors' assets during a CCAA process. However, the Debtors and the Monitor have provided notice of the Bidding Procedures and sale of the Debtors' assets to all parties who ordinarily receive notice of such events in a CCAA proceeding, including the Debtors' senior secured lenders and those parties who formally request inclusion on the Monitor's service list.

13. The Debtors, with the assistance of the Monitor and the Financial Advisor, and under the oversight of the Canadian Court, are currently conducting a sale process in accordance with the Bidding Procedures.

14. The Debtors received Phase 1 bids from 32 parties, of which 18 were deemed Phase 1 Satisfactory Bids and allowed to participate in Phase 2.

15. Phase 2 of the Bidding Procedures is currently ongoing and the Debtors and the Financial Advisor are actively engaging with the remaining bidders in order to advance the process, notably with respect to additional due diligence, management presentations, and site visits. Phase 2 Bids are due on January 6, 2023. The Debtors may consider bids for substantially all of their assets as a going concern, or a series of piecemeal sales of the Debtors' assets.

16. The Phase 2 Bid Deadline, and all other deadlines set forth in the Bidding Procedures, are subject to change with the consent of the Monitor and the DIP Lenders.

17. An Auction, if necessary, is currently set for the week of January 9, 2023, and the Successful Bid(s) must be selected by no later than January 13, 2023, at 5:00 p.m. (prevailing

Eastern time). The parties will then have until January 27, 2023, to complete definitive sale documentation.

18. During the week of January 30, 2023, the Debtors anticipate seeking a CCAA Sale Order approving the Successful Bid(s) and authorizing the Debtors to consummate the transactions contemplated therein in the Canadian Proceeding, whereby parties wishing to oppose the entry of a CCAA Sale Order will have the opportunity to object and be heard in the Canadian Court.

19. The Debtors anticipate that the definitive purchase agreement for the sale of the Debtors' assets will require, as a closing condition, the entry of an order from this Court approving the sale under the Bankruptcy Code and recognizing and enforcing the CCAA Sale Order.

20. The Bidding Procedures set February 7, 2023, as the Outside Date by which a transaction must close, as Debtors anticipate having an need to close a sale on an expedited timeframe following entry of a CCAA Sale Order.

21. Notwithstanding entry of a U.S. Sale Order, the Debtors' creditors will have the opportunity to participate in any claim process conducted in the Canadian Proceeding.

22. The CCAA prohibits preferential and/or fraudulent transfers of the property of the Debtors.

[Signature Page Follows]

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that, based upon my knowledge, information, and belief as set forth herein, the foregoing is true and correct.

Dated: December 20, 2022



Sandra Abitan
Canadian Counsel to the Debtors