

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Commercial Division)

(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act, RSC 1985,
c. C-36)

No.: 500-11-061483-224

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

**FORMERXBC INC. (formerly XEBEC ADSORPTION
INC.) ET AL.**

Debtors / Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

**APPLICATION OF THE MONITOR FOR AUTHORIZATION TO
MAKE PAYMENTS IN CONNECTION WITH THE CCAA CHARGES
AND RELATED RELIEF**

**(Section 11 of the *Companies' Creditors Arrangement Act*,
RSC 1985, c C-36)**

**TO THE HONOURABLE JUSTICE CHRISTIAN IMMER, J.S.C. SITTING IN
COMMERCIAL DIVISION, IN THE JUDICIAL DISTRICT OF MONTRÉAL, THE
MONITOR, DELOITTE RESTRUCTURING INC., RESPECTFULLY SUBMITS AS
FOLLOWS:**

I. INTRODUCTION

1. By the present Application, Deloitte Restructuring Inc., in its capacity as Court-appointed monitor (the "**Monitor**") is seeking the issuance of an order substantially in the form of the draft order communicated herewith as **Exhibit M-1**, authorizing the Monitor to proceed with certain payments to beneficiaries of the CCAA Charges from sale proceeds in respect of the transactions executed as part of the SISP.

II. PROCEDURAL BACKGROUND

2. On September 29, 2022, at the request of the Debtors / Petitioners (the "**Petitioners**"), the Court issued a First Day Initial Order (the "**FDIO**") pursuant to the

CCAA and a Bidding Procedures Order (the “**Bidding Procedures Order**”), as appears from the Court record.

3. The FDIO, *inter alia*:
 - (a) appointed the Monitor;
 - (b) ordered a stay of proceedings in respect of the Petitioners and their directors and officers until October 7, 2022, as extended thereafter pursuant to the ARIO (as defined below), (the “**Stay**”); and
 - (c) declared that Québec is the “center of main interest” of the Petitioners and, accordingly, authorized the Petitioners to apply, as they may consider necessary or desirable, to any other court, tribunal, regulatory, administrative or other body, wherever located, for orders to recognize and/or assist in carrying out the terms of the Initial Order and any subsequent Orders rendered by this Court in the context of these proceedings, including, without limitation, orders under Chapter 15 of the United States Bankruptcy Code 11 U.S.C. §§ 101-1532.
4. The Bidding Procedures Order, *inter alia*, approved the proposed Sale and Investment Solicitation Process (the “**SISP**”) and its implementation in accordance with the Procedures for the Sale and Investment Solicitation Process appended thereto as Schedule “A” (the “**Bidding Procedures**”), as appears from the Court record.
5. The Bidding Procedures Order also approved the engagement of National Bank Financial Inc. (“**NBF**”) to assist in the implementation of the SISP.
6. On October 7, 2022, at the Petitioners’ request, the Court issued an Order Extending the Stay until October 20, 2022, as appears from the Court record.
7. On October 20, 2022, at the Petitioners’ request, the Court issued an Amended and Restated Initial Order (the “**ARIO**”) pursuant to the CCAA, as appears from the Court record.
8. The ARIO, *inter alia*:
 - (a) extended the Stay until November 28, 2022;
 - (b) approved a key employee retention plan, a key vice-president retention plan and a key executive incentive plan (collectively, the “**KERPs**”) and granted a Court-ordered charge to secure the payment owed to the key employees in accordance with the KERPs; and
 - (c) approved the interim financing facility (the “**DIP Facility**”) provided by the National Bank of Canada (“**NBC**”) and Export Development Canada

(“**EDC**”, and collectively with NBC, the “**Interim Lenders**”) in accordance with the Interim Financing Term Sheet filed under seal as Exhibit P-2A in support of the Application for the Issuance of an Amended and Restated Initial Order, and granted a Court-ordered charge (the “**DIP Charge**”) in an amount sufficient to cover the potential exposure of the Interim Lenders under the DIP Facility.

9. On November 28, 2022, at the Petitioners’ request, the Court issued an Order Extending the Stay of Proceedings and Granting Ancillary Relief, which extended the Stay for a third time until February 3, 2023, as appears from the Court record.
10. On February 3, 2023, at the Petitioners’ request, the Court issued a Second Amended and Restated Initial Order (the “**Second ARIO**”), pursuant to the CCAA, as appears from the Court record.
11. The Second ARIO, *inter alia*:
 - (a) extended the Stay until February 13, 2023; and
 - (b) increased the Administration Charge to a maximum amount of \$3,000,000.
12. On the same date, the Court also issued the Approval and Vesting Order in respect of the assets of Applied Compression Systems Ltd. (the “**ACS AVO**”), the whole as appears from the Court record.
13. On February 10, 2023, the Monitor issued its Sixth Report to the Court Submitted by Deloitte Restructuring Inc. in its Capacity as Monitor (the “**Sixth Report**”).
14. On February 13, 2023, at the Petitioners’ request, the Court issued a Third Amended and Restated Initial Order (the “**Third ARIO**”), pursuant to the CCAA, as appears from the Court record.
15. The Third ARIO, *inter alia*:
 - (a) extended the Stay until March 17, 2023;
 - (b) approved the Second DIP Facility provided by EDC;
 - (c) granted the Second DIP Charge; and
 - (d) provided for a reduction mechanism of the Administration Charge, to take effect upon issuance of the Monitor’s certificate confirming, at the earliest of (i) the receipt of the Initial Advance of the Second DIP Facility or (ii) of the payments of the net proceeds of the transaction, as further detailed at paragraph 72 of the Third ARIO.

(As these terms are defined in the Third ARIO).

16. On the same date, the Court also issued the GNR AVO and the Sullair AVO, as defined and as further described below.
17. The Ivys AVO, dated February 17, 2023, was also subsequently issued by the Court.

III. TRANSACTIONS APPROVED BY THE COURT AS PART OF THE SISP, TO DATE

A. Approval and Vesting Orders issued by the Court

18. As indicated above, the ACS AVO was issued on February 8, 2023.
19. On February 13, 2023, the Court also issued an Approval and Vesting Order with respect to:
 - (a) the sale of substantially all shares and units of GNR LP (the “**GNR AVO**”) to Fonds de Solidarité des Travailleurs FTQ; and
 - (b) the sale of substantially all assets of CDA Systems, LLC and California Compression LLC to Sullair, LLC (the “**Sullair AVO**”);(as appears from the Court record)
20. Given the contestation of certain objecting parties, the approval hearing in respect of the transaction relating to the sale of the assets of Xebec Adsorption Inc. and Compressed Air International Inc. did not take place as planned on February 13, 2023 and took place on February 17, 2023.
21. On February 18, 2023, following said hearing, the Court dismissed the contestation and issued an Approval and Vesting Order (dated February 17, 2023) with respect to the sale of substantially all the assets of Xebec Adsorption Inc. and Compressed Air International Inc. to Ivys Adsorption Inc. and Ivys, Inc. (the “**Ivys AVO**”), as appears from the Court record.

B. Subsequent closing of the transactions and Monitor’s certificates evidencing receipt of sale proceeds from purchasers

22. Following the issuance by the Court of the ACS AVO, the GNR AVO, the Sullair AVO and the Ivys AVO (collectively, the “**AVOs**”), the parties to the transactions thereto, with the assistance of the Monitor, proceeded with the closing of such transactions.
23. As provided for under the AVOs, following the Monitor’s receipt of confirmation from the purchaser and the seller(s) of the (i) execution of the purchase agreement, the (ii) payment of the purchase price, and the (iii) satisfaction and/or waiver of all

conditions to closing of these transactions, the Monitor was to issue and notify a certificate of completion in respect of same.

24. Consequently, the Monitor issued the following certificates and filed same in the Court record, confirming the closing of the four abovementioned (4) transactions in accordance with the AVOs (the “**Transactions**”):
 - (a) February 7, 2023: Certificate of the Monitor in respect of the transaction relating to Applied Compression Systems Ltd.;
 - (b) February 15, 2023: Certificate of the Monitor in respect of the transaction relating to GNR LP;
 - (c) February 21, 2023: Certificate of the Monitor in respect of the transaction relating to CDA Systems, LLC and California Compression LLC; and
 - (d) February 27, 2023: Certificate of the Monitor in respect of the transaction relating to of Xebec Adsorption Inc. and Compressed Air International Inc.

as appears from copies of these certificates filed in the Court record.
25. Moreover, on February 21, 2023, the Monitor issued the Certificate of the Monitor (First Reduction of the Administration Charge) following receipt of the initial advance of the Second DIP Facility, thereby reducing the amount of the Administration Charge under the Third ARIO to \$2,250,000.
26. As provided for under the ACS AVO and as previously reported to the Court, the Monitor used the net proceeds from the sale of the purchased assets relating thereto to pay certain outstanding invoices of beneficiaries of the Administration Charge (as then defined in the Second ARIO).
27. In addition, and as authorized under the GNR AVO, the Sullair AVO and the Ivys AVO, the Monitor used a portion of the net proceeds from the sale of the purchased assets relating thereto to pay certain outstanding invoices of beneficiaries of the Administration Charge, up to a maximum amount of \$1.1M, as provided for in the Second DIP Term Sheet.
28. As a result of the closing of the Transactions and as will be further reported to the Court by the Monitor in its seventh report, the Monitor currently holds in its account the remaining net proceeds from the Transactions, excluding the sums mentioned above, which were paid in accordance with the AVOs to the beneficiaries of the Administration Charge (the “**Net Proceeds**”).
29. At para. 81 of the Sixth Report, the Monitor indicated : *“the balance of the net proceeds will be kept in trust by the Monitor until a subsequent order from this Court is sought in the coming weeks, which is expected to provide for payments or*

holdbacks in favour of the beneficiaries of the CCAA Charges pursuant to the Third ARIO”.

30. It is in this context that the Monitor files the present Application and requests the issuance of the order sought herein.

IV. RELIEF SOUGHT HEREIN

A. Authorization to make payments to beneficiaries of the CCAA Charges

31. As at the present date, pursuant to the Third ARIO and the priority set forth at para. 75 therein, and subject to a further amended order issued by this Court, the CCAA Charges currently in place are the following:
 - (a) Administration Charge, in an amount of \$2,250,000;
 - (b) D&O Charge, in an amount of \$3,700,000;
 - (c) DIP Charge, in an amount of \$3,600,000;
 - (d) Second DIP Charge, in an amount of \$3,000,000;
 - (e) Transaction Charge, in amount of \$975,000 (pursuant to para. 17 of the Bidding Procedures Order); and
 - (f) KERP Charge, in an amount of \$1,080,000.
32. As provided at paragraph 31 of the Third ARIO, distribution of any net sale proceeds resulting from the sale or divestiture of any Business or Property (as defined therein) will form part of the Intercompany Transactions Report to be filed with the Court prior to their distribution or payment. Distributions made in respect of any amounts owing under CCAA Charges will also form part of the Intercompany Transactions Report, although they may however be made before the issuance of said report, in accordance with paragraph 31 of the Third ARIO.
33. As part of the order sought herein, the Monitor thereby, seeks authorization to use a portion of the Net Proceeds to pay certain amounts currently owed by the Petitioners to beneficiaries of the CCAA Charges, such amounts being further detailed in its seventh report to be filed with the Court.
34. The Monitor proposes to proceed with such payments, in accordance with the order and priority set forth in the Third ARIO (as further detailed in the draft order M-1), (the “**Monitor Payment Mechanism**”):
 - (a) DIP Charge: the Monitor will pay all amounts outstanding under the DIP Facility to the Interim Lenders (which will be less than the amount of the

DIP Charge), in accordance with the payment statements to be provided by EDC and NBC, in a form and substance satisfactory to the Monitor.

- (b) Second DIP Charge: the Monitor will pay all amounts owing under the Second DIP Facility to EDC (which will be less than the amount of the Second DIP Charge), in accordance with the payment statement to be provided by EDC, in a form and substance satisfactory to the Monitor.
 - (c) Transaction Charge: the Monitor will pay the invoices issued by NBF, in the amount of \$1,121,006.25 (\$975,000, plus applicable taxes) in connection with the Transaction Fee covered by the Transaction Charge (as set forth under the Bidding Procedures Order, and under the Engagement Letter, as defined in said order), as it appears from the NBF invoices, filed herewith as **Exhibit M-2, en liasse, under seal**.
 - (d) KERP Charge: the Monitor will pay amounts owed under the KERPs as they become due, including in respect of additional potential key employee retention plans that may be requested by the Petitioners and issued by the Court.
35. It is to be noted, in connection with paragraph 76 pertaining to subparagraph 28a) of the Third ARIO in respect to the remittance *inter alia* of any statutory deemed trust amounts in favor of the Crown, that, based on information available to the Monitor, such amounts are current.
36. The Monitor Payment Mechanism contemplated herein would allow for the use of the Net Proceeds in order to pay the amounts owing to creditors secured by the CCAA Charges, so as to (i) eliminate certain CCAA Charges upon payment of the obligations guaranteed by said charges, as the case may be, and to (ii) cease incurring interest and fees in connection with the DIP Facility and Second DIP Facility, which have become due.
37. For greater certainty, the payments contemplated herein and to be made by the Monitor will form part of the Intercompany Transactions Report (to be filed in due time, pursuant *inter alia* to para. 31 to 33 of the Third ARIO), and in respect of the allocation process between Petitioner entities which will be performed and will arise therefrom.
38. Any balance of Net Proceeds not paid by the Monitor in accordance with the Monitor Payment Mechanism contemplated herein, well in excess of the remaining amounts pertaining to the CCAA Charges, as further detailed in the seventh report of the Monitor to be filed in support of this Application, will remain in trust with the Monitor until further order of the Court.

B. Effect of the Monitor Payment Mechanism on CCAA Charges

i. Cancellation and discharge of the DIP Charge, the Second DIP Charge and the Transaction Charge

39. In light of the payments contemplated herein, it is appropriate to include a mechanism allowing for the discharge of certain CCAA Charges, including the DIP Charge, the Second DIP Charge and the Transaction Charge, as detailed hereunder.
40. Upon full reimbursement of the DIP Facility, and the receipt by the Monitor of a confirmation of same by the Interim Lenders, the Monitor will issue a certificate which will confirm and effect the discharge and cancellation of the DIP Charge.
41. Such will also be applicable in respect of the Second DIP Facility. Upon the Monitor's receipt of EDC's confirmation that the Second DIP Facility has been fully reimbursed, the Monitor will issue a certificate which will confirm and effect the discharge and cancellation of the Second DIP Charge.
42. Upon payment of the amount of \$975,000 to NBF, and confirmation of receipt by NBF to the Monitor, the Monitor will issue a certificate which will confirm and effect the discharge and cancellation of the Transaction Charge.

ii. Reduction of the KERP Charge

43. As indicated above, the Monitor will continue to hold certain amounts with respect to the KERP Charge, but will be authorized to make certain payments relating thereto as they become due.
44. Given the above, the Monitor will be authorized to issue a certificate confirming and effecting a reduction of the KERP Charge in an amount equivalent to such payments, which may be made from time to time.
45. In summary, and following the payments contemplated by the Monitor Payment Mechanism contemplated herein, the sole charges which shall encumber the property of the Petitioners shall be:
 - (a) The Administration Charge;
 - (b) The D&O Charge; and
 - (c) The KERP Charge (subject to certain reduction(s) to occur from time to time, as explained above).
46. At this time, in light of the transactions that have already been completed and subject to certain payments projected during the upcoming stay extension period and the completion of the other contemplated transactions and the outcome and finalization

of the CCAA proceedings and relief to be sought as part of same, it is anticipated that the payments to be made out of the remaining Net Proceeds for obligations secured by the D&O Charge could be nil or minimal.

C. Execution Notwithstanding Appeal

47. The Monitor respectfully submits that it is justified to seek provisional execution of the order to be issued on the present Application notwithstanding appeal, considering that a stay of execution thereof would be detrimental to the restructuring process.
48. For the reasons set forth above, the Monitor respectfully submits that it is both appropriate and necessary that this Honourable Court render the order sought herein.

D. Sealing of Exhibit M-2

49. The Monitor is seeking an order declaring that Exhibit M-2 be filed under seal and kept confidential.
50. The sealing of the unredacted version of Exhibit M-2 is necessary, considering that it contains commercially sensitive information belonging to NBF, including notably information and references to information contained in NBF's Engagement Letter, filed under seal with this Court as Exhibit P-3 of the *Application for the Issuance of a First Day Initial Order, a Deemed Extension of the Stay Period and a Bidding Procedures Order*, dated September 28, 2022.
51. The sealing is justified, *inter alia*, to avoid divulging information currently kept under seal in the present proceedings, as well as information of competitive nature belonging to NBF, including in respect to pricing, and which would be moreover detrimental in the hands of a competitor.

FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the present *Application of the Monitor for Authorization to Make Payments in Connection with the CCAA Charges and Related Relief* (the "**Application**");

ISSUE an order substantially in the form of the draft order communicated in support of the Application as **Exhibit M-1**;

ORDERS that **Exhibit M-2**, filed in support of the Application shall be filed under seal and kept confidential until further order of this Court.

ORDER the provisional execution of the order to be rendered on the Application notwithstanding appeal and without security;

THE WHOLE WITHOUT COSTS, save and except in the event of contestation.

MONTRÉAL, March 10, 2023

McCarthy Tétrault snc/srl

McCarthy Tétrault LLP

Mtre. Jocelyn T. Perreault

Mtre. Marc-Étienne Boucher

Attorneys for the Monitor

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Montréal, Québec H3B 0A2

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meboucher@mccarthy.ca

Email notification: notification@mccarthy.ca

Our file: 115185-565089

SOLEMN DECLARATION

I the undersigned, Jean-François Nadon, CPA, CA, CIRP, LIT, exercising my profession at Deloitte Restructuring Inc., 1190, Avenue des Canadiens-de-Montréal, Suite 500, Montreal, QC, Canada H3B 0M7, solemnly declares the following:

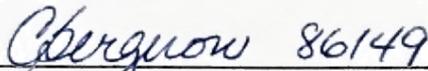
1. I am a Partner at Deloitte Restructuring Inc. and a duly authorized representative of the Monitor for the purposes hereof and in said capacity;
2. I have taken cognizance of the attached *Application of the Monitor for Authorization to Make Payments in Connection with the CCAA Charges and Related Relief* (the "**Application**").
3. All of the facts alleged in the Application of which I have personal knowledge are true.
4. Where the facts alleged in the Application have been obtained from others, I believe them to be true.

AND I HAVE SIGNED:



Jean-François Nadon

SOLEMNLY DECLARED BEFORE ME BY
VIRTUAL MEANS IN SAINTE-MARTHE,
QUÉBEC, ON MARCH 10, 2023.



Chantal Bergeron

Commissioner for Oaths for the Province of
Québec

**NOTICE OF PRESENTATION
COMMERCIAL DIVISION**

TO: SERVICE LIST

1. PRESENTATION OF THE PROCEEDING

TAKE NOTE that the *Application of the Monitor for Authorization to Make Payments in Connection with the CCAA Charges and Related Relief* will be presented for adjudication before the Commercial Division of the Superior Court of Québec, in Courtroom **16.04** of the Montréal Courthouse during the virtual calling of the roll on **March 16, 2023, at 9:00 a.m.**

2. HOW TO JOIN THE VIRTUAL CALLING OF THE ROLL

The contact information to join the virtual calling of the roll in room 16.04 is as follows:

By Teams: by clicking on the link available at <http://www.tribunaux.qc.ca> ("*Liens TEAMS pour rejoindre les salles du Palais de justice*"):

You must then enter your name and click «Join now» («*Rejoindre maintenant*»). To facilitate the process and the identification of participants, we ask that you enter your name in the following manner:

Attorneys: Mtre Name, Surname (name of party represented)

Trustees: Name, Surname (trustee)

Superintendent: Name, Surname (superintendent)

Parties not represented by an attorney: Name, Surname (specify: plaintiff, defendant, applicant, respondent, creditor, opposing party, or other)

Persons attending a public hearing may simply indicate "public".

By telephone:

Canada, Québec (Charges will apply): +1 581-319-2194

Canada (Toll-free): (833) 450-1741

Conference ID: 516 211 860#

By VTC videoconference: teams@teams.justice.gouv.qc.ca

In person: If and only if you do not have access to one of the above-mentioned technological means. You may then go to room 15.09 of the Montréal Courthouse located at:

1, Notre-Dame Street East, Montréal, Québec.

3. DEFAULT TO PARTICIPATE IN THE VIRTUAL CALLING OF THE ROLL

TAKE NOTICE that in accordance with the Third Amended and Restated Initial Order, if you wish to contest this Application, you must serve responding materials or a notice stating the objection to the Application and the grounds for such objection in writing to the Petitioners and the Monitor, with a copy to all persons on the Service List, no later than **5:00 P.M. on March 13, 2023**, and participate at the virtual calling of the roll, failing which, judgment may be rendered during the presentation of the proceeding, without further notice or delay.

4. OBLIGATIONS

4.1 Duty of cooperation

TAKE NOTE that the parties are duty-bound to cooperate and, in particular, to keep one another informed at all times of the facts and particulars conducive to a fair debate and make sure that relevant evidence is preserved (s. 20, *Code of Civil Procedure*).

4.2 Dispute prevention and resolution processes

TAKE NOTE that the parties must consider private prevention and resolution processes before referring their dispute to the courts, which are namely negotiation, mediation or arbitration, for which the parties call on a third party (*Code of Civil Procedure*, art. 2).

DO GOVERN YOURSELF ACCORDINGLY.

MONTRÉAL, March 10, 2023

McCarthy Tétrault senecl srl

McCarthy Tétrault LLP
Attorneys for the Monitor

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Commercial Division)

(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act, RSC 1985,
c. C-36)

No.: 500-11-061483-224

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

FORMERXBC INC. (formerly **XEBEC
ADSORPTION INC. ET AL.**

Debtors / Petitioners

-and-

DELOITTE RESTRUCTURING INC.

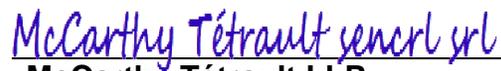
Monitor

LIST OF EXHIBITS

Exhibit M-1: Draft Order

Exhibit M-2, en liasse, *under seal*: NBF Invoices

MONTRÉAL, March 10, 2023



McCarthy Tétrauld LLP
Attorneys for the Monitor

**SUPERIOR COURT
(Commercial Division)**

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: March 16, 2023

BEFORE THE HONOURABLE CHRISTIAN IMMER, J.S.C.

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

**FORMERXBC INC. (FORMERLY XEBEC ADSORPTION INC.)
11941666 CANADA INC. (FORMERLY XEBEC RNG HOLDINGS INC.)
APPLIED COMPRESSION SYSTEMS LTD.
1224933 ONTARIO INC. (FORMERLY COMPRESSED AIR INTERNATIONAL INC.)
XEBEC HOLDING USA INC.
ENERPHASE INDUSTRIAL SOLUTIONS, INC.
CDA SYSTEMS, LLC
XEBEC ADSORPTION USA INC.
THE TITUS COMPANY
NORTEKBELAIR CORPORATION
XBC FLOW SERVICES – WISCONSIN INC.
CALIFORNIA COMPRESSION, LLC
XEBEC SYSTEMS USA, LLC**

Debtors / Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

**ORDER AUTHORIZING THE MONITOR TO PAY CERTAIN AMOUNTS OWED TO
BENEFICIARIES OF CCAA CHARGES**

- [1] **CONSIDERING** the *Application of the Monitor for Authorization of Payments in Connection with the CCAA Charges and Related Relief* (the “**Application**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (“**CCAA**”), the exhibits thereto and the affidavit of Mr. Jean-François Nadon, filed in support thereof;
- [2] **CONSIDERING** the Seventh Report of the Monitor dated March ●, 2023;
- [3] **CONSIDERING** the submissions of counsel;
- [4] **CONSIDERING** the Fourth Amended and Restated Initial Order (the “**Fourth ARIO**”) issued by this Court on March ●, 2023;
- [5] **CONSIDERING** that, following the issuance of the AVOs, the Monitor issued four (4) certificates on February 7, 15, 21 and 27, 2023, which were filed in the Court record, and which confirmed the closing of the Transactions relating thereto;
- [6] **GIVEN** that, pursuant to the AVOs, the Net Proceeds of the Transactions were transferred to the Monitor and are currently held in trust by the Monitor;
- [7] **GIVEN** that it is appropriate and justified that the Monitor be allowed to pay from the Net Proceeds, sums owed to beneficiaries of the CCAA Charges, the whole in accordance with the mechanism set forth hereinafter;
- [8] **GIVEN** the provisions of the CCAA:

THE COURT HEREBY:

- [9] **GRANTS** the Application.
- [10] **ORDERS** that **Exhibit M-2**, filed in support of the Application shall be filed **under seal** and kept confidential until further order of this Court.
- [11] **DECLARES** that, unless otherwise defined, all capitalized terms in this Order shall have the meaning ascribed thereto in the Application.
- [12] **DECLARES** that the Monitor is authorized to pay, from the Net Proceeds, amounts owed under the DIP Charge, the Second DIP Charge, and the Transaction Charge, as and when they become due, without further order by this Court.

- [13] **DECLARES** that, upon making payments pursuant to paragraph [12] herein in respect of the DIP Charge, the Second DIP Charge and the Transaction Charge, and upon receiving confirmation, respectively of (i) EDC and NBC, (ii) EDC, and (iii) NBF of the reimbursement of the obligations secured by these charges, the Monitor shall notify and file with the Court record a certificate confirming and effecting the cancellation and discharge of the DIP Charge, the Second DIP Charge, and the Transaction Charge, as applicable and as the case may be, without further order of this Court.
- [14] **DECLARES** that the Monitor is authorized to pay, from the Net Proceeds, amounts owed under the KERP Charge, as and when they become due, without further order by this Court.
- [15] **DECLARES** that, upon making payments pursuant to paragraph [14] herein in relation to the KERP Charge, the Monitor shall notify and file with the Court record a certificate confirming and effecting the reduction and/or the cancellation and discharge of the KERP Charge, as the case may be, in an amount equivalent to the payments made, and without further order of this Court.
- [16] **DECLARES**, for greater certainty, that the certificates of the Monitor to be issued and filed pursuant to this order, shall validly reduce and/or discharge the CCAA Charges, as applicable, without the necessity of a future amendment of the Fourth ARIO or of a supplemental or subsequent order of this Court.
- [17] **ORDERS** that notwithstanding:
- (a) the pendency of these proceedings;
 - (b) any petition for a bankruptcy order now or hereafter issued pursuant to the BIA and any order issued pursuant to any such petition; or
 - (c) the provisions of any federal or provincial legislation;
- the execution of this Order, and the payments made pursuant to or in connection with this Order are to be binding on any trustee in bankruptcy that may be appointed, and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against the Petitioners, the beneficiaries of the CCAA Charges or the Monitor.
- [18] **DECLARES** that this Order shall have full force and effect in all provinces and territories of Canada.
- [19] **DECLARES** that the Monitor may, from time to time, apply to this Court for directions concerning the exercise of its powers, duties and rights hereunder or in respect of the proper execution of this Order.

- [20] **REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court or in the United States of America, including without limitation the United States Bankruptcy Court for the District of Delaware, and any court or administrative body elsewhere, to give effect to this Order, and to assist the Monitor and its respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor as may be necessary or desirable to give effect to this Order in any foreign proceeding, to assist the Monitor and its respective agents in carrying out this Order.
- [21] **ORDERS** that any prior delay for the presentation of the Application is hereby abridged and validated so that the Application is properly returnable and dispenses with further service thereof.
- [22] **PERMITS** service of this Order at any time and place and by any means whatsoever.
- [23] **THE WHOLE** without costs.

CHRISTIAN IMMER, J.S.C.

MTRE. JOCELYN T. PERREAU
MTRE. MARC-ÉTIENNE BOUCHER
McCarthy Tétrault LLP
Attorneys for the Monitor

Hearing date: March 16, 2023

No: 500-11-061483-224

**SUPERIOR COURT
(Commercial Division)**

(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act,
RSC 1985, c. C-36)

DISTRICT OF MONTRÉAL

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

**FORMERXBC INC. (formerly XEBEC
ADSORPTION INC. & AL)**

Debtors / Petitioners

and.

DELOITTE RESTRUCTURING INC.

Monitor

***APPLICATION OF THE MONITOR FOR
AUTHORIZATION TO MAKE PAYMENTS IN
CONNECTION WITH THE CCAA CHARGES
AND RELATED RELIEF, SOLEMN
DECLARATION, NOTICE OF
PRESENTATION, LIST OF EXHIBITS,
EXHIBITS M-1 and M-2 (Section 11 of the
Companies' Creditors Arrangement Act,
RSC 1985, c C-36)***

ORIGINAL

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