

**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:**

XEBEC ADSORPTION INC.

-and-

XEBEC RNG HOLDINGS INC.

-and-

APPLIED COMPRESSION SYSTEMS LTD.

-and-

COMPRESSED AIR INTERNATIONAL INC.

-and-

XEBEC HOLDING USA INC.

-and-

ENERPHASE INDUSTRIAL SOLUTIONS, INC.

-and-

CDA SYSTEMS, LLC

-and-

XEBEC ADSORPTION USA INC.

-and-

THE TITUS COMPANY

-and-

NORTEKBELAIR CORPORATION

-and-

XBC FLOW SERVICES – WISCONSIN INC.

-and-

CALIFORNIA COMPRESSION, LLC

-and-

XEBEC SYSTEMS USA, LLC

Debtors / Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

**APPLICATION FOR AN EXTENSION OF THE STAY OF
PROCEEDINGS AND FOR ANCILLARY RELIEF**

**(Sections 11 and 11.02 of the *Companies' Creditors
Arrangement Act*, RSC 1985, c C-36)**

**TO THE HONOURABLE JUSTICE CHRISTIAN IMMER OR TO ONE OF THE
HONOURABLE JUSTICES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL
DIVISION, IN THE JUDICIAL DISTRICT OF MONTRÉAL, THE DEBTORS /
PETITIONERS RESPECTFULLY SUBMIT AS FOLLOWS:**

I. INTRODUCTION

1. The Debtors / Petitioners Xebec Adsorption Inc., Xebec RNG Holdings Inc., Applied Compression Systems Ltd., Compressed Air International Inc., Xebec Holding USA Inc., Enerphase Industrial Solutions, Inc., California Compression, LLC, CDA Systems, LLC, Xebec Adsorption USA Inc., The Titus Company, Nortekbelair Corporation, Xebec Systems USA, LLC, XBC Flow Services – Wisconsin Inc. (collectively, the “**Petitioners**”) form part of a global provider of sustainable gas solutions used in energy, mobility and industry applications, headquartered in Montréal, Québec (along with various overseas subsidiaries, the “**Xebec Group**”).
2. By the present Application, the Petitioners are seeking the issuance of an order, *inter alia*, (i) extending the Stay Period (as defined below) until February 3, 2023 (the “**Extension Date**”), and (ii) approving an amendment to the list of participants in the KERPs (as defined below), substantially in the form of the draft Order Extending the Stay of Proceedings and Granting Ancillary Relief communicated herewith as **Exhibit P-1**.

II. BACKGROUND

3. On September 29, 2022, at the Petitioners’ request, the Court issued a First Day Initial Order (the “**FDIO**”) pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (“**CCAA**”) and a Bidding Procedures Order (the “**Bidding Procedures Order**” collectively with the FDIO, the “**First Day Orders**”), as appears from the Court record.
4. The FDIO, *inter alia*:
 - (a) appointed Deloitte Restructuring Inc. as monitor of the Petitioners’ CCAA proceedings (the “**Monitor**”);

- (b) ordered a stay of proceedings in respect of the Petitioners and their directors and officers until October 7, 2022 (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 (the “**U.S. Bankruptcy Code**”).
5. The Bidding Procedures Order, *inter alia*:
- (a) approved the proposed Sale and Investment Solicitation Process (the “**SISP**”); and
 - (b) approved the engagement of National Bank Financial Inc. (“**NBF**”) to assist in the implementation of the SISP.
6. 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.
7. The ARIO, *inter alia*:
- (a) extended the Stay until November 28, 2022 (the “**Stay Period**”);
 - (b) approved the debtor-in-possession facility (the “**DIP Facility**”) provided by the National Bank of Canada and Export Development Canada (collectively, the “**DIP Lenders**”) and granted a Court-ordered charge (the “**DIP Charge**”) in an amount sufficient to cover the potential exposure of the DIP Lenders under the DIP Facility; and
 - (c) 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 (the “**KERP Charge**”) to secure the payment owed to the key employees in accordance with the KERPs.

III. RESTRUCTURING EFFORTS SINCE THE ISSUANCE OF THE ARIO

A. General Developments

8. Since the issuance of the ARIO, the Petitioners, under the supervision of the Monitor, have:
- (a) continued to operate the Company in the ordinary course;

- (b) communicated with the employees, customers and suppliers of the Xebec Group in order to maintain their operations and ensure a continued supply of goods;
- (c) negotiated with certain of their key customers with a view of adjusting certain terms of their respective contracts in order to alleviate the pressure on the Petitioners' liquidity requirements through these CCAA proceedings, while continuing associated projects;
- (d) worked on a revised and updated cash flow statement covering the period until the Extension Date (as defined below), in consultation with the Monitor.

B. Chapter 15 Proceedings

- 9. On October 27, 2022, at the Petitioners' request, the United States Bankruptcy Court for the District of Delaware (the "**US Bankruptcy Court**") issued an order recognizing, among other things, that the proceedings before this Court constitute "foreign main proceedings" as defined in Chapter 15 of the U.S. Bankruptcy Code, pursuant to the U.S. Bankruptcy Code.
- 10. On November 2, 2022, at the Petitioners' request, the US Bankruptcy Court issued an order granting interim relief in recognizing and enforcing the DIP Facility approved under the ARIO (the "**Interim DIP Recognition Order**"), pursuant to the U.S. Bankruptcy Code.
- 11. The Interim DIP Recognition Order, *inter alia*, gave full force and effect on an interim basis to the DIP Charge as to the Petitioners and their property in the United States, on an interim basis.
- 12. The objection deadline for the Petitioners' request for final relief was November 21, 2022. No objection was received and on November 22, 2022, the US Bankruptcy Court issued an order granting final recognition and enforcement of the DIP Charge in the United States.

C. SISP

- 13. In accordance with the Bidding Procedures Order, the SISP is being conducted in accordance with the following milestones:
 - (a) non-binding letters of intent ("**LOIs**") were due on or before November 11, 2022;
 - (b) NBF notified each phase 1 qualified bidder as to whether its bid constituted a Phase 1 Satisfactory Bid (as defined in the SISP) on November 18, 2022; and

- (c) definitive offers by Phase 2 Qualified Bidders (as defined below) are due on or before January 6, 2023;

the whole as further provided for in the bidding procedures (Schedule A to the Bidding Procedures Order).

- 14. As of the date hereof, 32 parties have submitted LOIs, and the Petitioners have reviewed same with the assistance of NBF and under the supervision of the Monitor.
- 15. On November 18, 2022, 18 LOIs were determined by the Petitioners to constitute Phase 1 Satisfactory Bids (as defined in the SISP), and such parties were invited to participate in the phase 2 of the SISP (the "**Phase 2 Qualified Bidders**").
- 16. Since then, the Petitioners and NBF have actively engaged with the Phase 2 Qualified Bidders in order to advance the process, notably with respect to additional due diligence, management presentations and site visits.

IV. GROUNDS FOR THE EXTENSION OF THE STAY OF PROCEEDINGS

- 17. Since the issuance of the ARIO, the Petitioners have acted, and continue to act in good faith and with due diligence.
- 18. The Stay Period currently expires on November 28, 2022.
- 19. It is respectfully submitted that the extension of the Stay Period to the Extension Date is required to provide the Petitioners with sufficient time to notably continue the conduct of the SISP by:
 - (a) continuing work with the Phase 2 Qualified Bidders in the context of their due diligence process;
 - (b) receiving and reviewing phase 2 bids; and
 - (c) if necessary, holding an auction to determine the Successful Bid(s) (as defined in the SISP)

the whole, with the assistance of NBF and under the supervision of the Monitor.

- 20. The Petitioners have paid their suppliers, employees and other creditors for the sums due from the date of the First Day Orders in the ordinary course of business and intend to continue doing so.
- 21. The Petitioners' cash flow is sufficient to continue operations up to and until the Extension Date, as will appear from the Monitor's report to be filed with the Court on or about the date hereof and in light of the DIP Facility approved by this Court.
- 22. No creditor will be unduly prejudiced by the extension sought.

V. ANCILLARY RELIEF SOUGHT

A. Amendment of the list of participants in the KERPs

23. Since the issuance of the ARIO, one of the participants in the KERPs has resigned, prior to the payment of the first incentive payment contemplated thereunder.
24. The Petitioners are seeking an order approving the amendment of the list of participants in the KERPs in order to replace the former employee by two other employees, whom the Company wishes to incentivise to remain in their positions given their ongoing contribution. An amended list of participants in the KERPs is communicated herewith, under Seal, as **Exhibit P-2**.
25. This proposed change would reduce the aggregate amount to be paid to the key employees under the KERPs by \$20,402.56.
26. Considering the *de minimis* change to the total amount of the KERPs which would result from this change, the Petitioners are not seeking an amendment of the KERP Charge.
27. The proposed amendment has been approved by the Monitor. The DIP Lenders were also advised, and they indicated having no objection thereto.

B. Sealing of Confidential Documents

28. The Petitioners are seeking an order declaring that Exhibit P-2 be kept strictly confidential and shall be filed under seal, considering that it contains sensitive personal information on the Petitioners' key employees such as their names, positions and salaries.
29. In the context of a highly competitive employment market, such information would give an undue advantage to the Petitioners' competitors and allow them to potentially attract key employees, affecting the Petitioners' restructuring efforts to the detriment of their stakeholders as a whole.

C. Execution Notwithstanding Appeal

30. The Petitioners respectfully submit that they are justified to seek provisional execution of the order to be rendered on the present Application notwithstanding appeal, considering that the relief sought herein is beneficial for their stakeholders, and a stay of execution thereof would be detrimental to the value of their assets and to the potential recovery of their respective creditors.

VI. CONCLUSION

31. The Monitor has informed the Petitioners that it supports the present Application.

32. For the reasons set forth above, the Petitioners respectfully submit that it is both appropriate and necessary that this Honourable Court render the order sought herein.

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

GRANT the present *Application for an Extension of the Stay of Proceedings and for Ancillary Relief* (the “**Application**”);

ISSUE an order substantially in the form of the draft Order Extending the Stay of Proceedings communicated in support of the Application as **Exhibit P-1**;

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

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

MONTREAL, November 22, 2022

Osler, Hoskin & Harcourt LLP

Osler, Hoskin & Harcourt LLP

Mtre. Sandra Abitan | Mtre. Julien Morissette |

Mtre. Sophie Courville-Le Bouyonnec

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Our file: 1233913

AFFIDAVIT

I the undersigned, Dimitrios Vounassis, domiciled for the purpose hereof at 700-1130 Sherbrooke Street West, in the city and judicial district of Montréal, Québec, H3A 2M8, solemnly declare the following:

1. I am the President and CEO of Xebec Adsorption Inc. and a duly authorized representative of the Debtors / Petitioners for the purposes hereof.
2. I have taken cognizance of the attached *Application for an Extension of the Stay of Proceedings and for Ancillary 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:



Dimitrios Vounassis

SOLEMNLY DECLARED BEFORE ME IN
MONTRÉAL, QUÉBEC, ON NOVEMBER
22, 2022.



Lyne St-Amour

Commissioner for Oaths for the Province of
Québec



**NOTICE OF PRESENTATION
COMMERCIAL DIVISION**

TO: SERVICE LIST (See attached)

1. PRESENTATION OF THE PROCEEDING

TAKE NOTE that the *Application for an Extension of the Stay of Proceedings and for Ancillary Relief* will be presented for adjudication before the Commercial Division of the Superior Court of Québec, in Courtroom **16.01** of the Montréal Courthouse during the virtual calling of the roll on **November 28, 2022, at 9:30 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 16.01 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: 374 552 698#

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

Videoconference ID: 1191960764

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 16.01 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 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 November 25, 2022** 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.

MONTREAL, November 22, 2022

Osler, Hoskin & Harcourt LLP

Osler, Hoskin & Harcourt LLP
Attorneys for the Debtors / Petitioners

**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:**

XEBEC ADSORPTION INC.

-and-

XEBEC RNG HOLDINGS INC.

-and-

APPLIED COMPRESSION SYSTEMS LTD.

-and-

COMPRESSED AIR INTERNATIONAL INC.

-and-

XEBEC HOLDING USA INC.

-and-

ENERPHASE INDUSTRIAL SOLUTIONS, INC.

-and-

CDA SYSTEMS, LLC

-and-

XEBEC ADSORPTION USA INC.

-and-

THE TITUS COMPANY

-and-

NORTEKBELAIR CORPORATION

-and-

XBC FLOW SERVICES – WISCONSIN INC.

-and-

CALIFORNIA COMPRESSION, LLC

-and-

XEBEC SYSTEMS USA, LLC

Debtors / Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

LIST OF EXHIBITS

- P-1: Draft Order Extending the Stay of Proceedings and Granting Ancillary Relief
- P-2: Amended List of Participants in the KERPs (confidential and under seal)

MONTRÉAL, November 22, 2022

Osler, Hoskin & Harcourt LLP

Osler, Hoskin & Harcourt LLP
Attorneys for Debtors / Petitioners

EXHIBIT P-1

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: November 28, 2022

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

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

**XEBEC ADSORPTION INC.
XEBEC RNG HOLDINGS INC.
APPLIED COMPRESSION SYSTEMS LTD.
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 EXTENDING THE STAY OF PROCEEDINGS AND GRANTING ANCILLARY
RELIEF**

- [1] **CONSIDERING** the *Application for an Extension of the Stay of Proceedings and for Ancillary Relief* (the “**Application**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (“**CCAA**”) and the exhibit and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof;
- [2] **CONSIDERING** the Fourth Report of the Monitor dated November ●, 2022;
- [3] **CONSIDERING** the submissions of counsel;
- [4] **GIVEN** the provisions of the CCAA;
- [5] **GIVEN** the Amended and Restated Initial Order rendered by the Court on October 20, 2022 (the “**ARIO**”)

THE COURT HEREBY:

- [6] **GRANTS** the Application.

Stay Extension

- [7] **EXTENDS** the Stay Period (as defined in the ARIO) to and including **February 3, 2023**.

KERPs

- [8] **ORDERS** that the amended list of participants in the KERPs (as defined in the ARIO) filed under seal as Exhibit P-2 to the Application is hereby approved, and the Petitioners are hereby authorized and empowered to perform their obligations set forth in the KERPs, including by making the payments to the individuals listed therein in accordance with the terms set out therein.

General

- [9] **ORDERS** that Exhibit-P-2 to the Application shall be filed under seal and kept confidential until further order of this Court.
- [10] **DECLARES** that this Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
- [11] **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 Petitioners, the Monitor and their respective agents in carrying out the terms of this Order.

[12] **ORDERS** the provisional execution of this Order notwithstanding appeal and without security.

[13] **THE WHOLE WITHOUT COSTS.**

Christian Immer, J.S.C.

MTRE SANDRA ABITAN
MTRE JULIEN MORISSETTE
MTRE SOPHIE COURVILLE-LE BOUYONNEC
(OSLER HOSKIN & HARCOURT LLP)
COUNSEL TO THE PETITIONERS

Hearing date: November 28, 2022

EXHIBIT P-2
(UNDER SEAL)

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:**

XEBEC ABSORPTION INC. & AL

Debtors / Petitioners

and.

DELOITTE RESTRUCTURING INC.

Proposed Monitor

**APPLICATION FOR AN EXTENSION OF THE
STAY OF PROCEEDINGS AND FOR ANCILLARY
RELIEF, AFFIDAVIT, NOTICE OF
PRESENTATION, LIST OF EXHIBITS, EXHIBIT P-
1 (Sections 11 and 11.02 of the *Companies'*
Creditors Arrangement Act, RSC 1985, c C-36)**

ORIGINAL

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