

**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**

**(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 extending the Stay Period (as defined below) until October 20, 2022, substantially in the form of the draft Order Extending the Stay of Proceedings 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 Period**”); 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.

III. **RESTRUCTURING EFFORTS SINCE THE FIRST DAY ORDERS**

6. Since the issuance of the First Day Orders, the Petitioners, under the supervision of the Monitor, have:

- (a) on September 30, 2022, applied for the recognition of the First Day Orders under Chapter 15 of the U.S. Bankruptcy Code before the United States Bankruptcy Court for the District of Delaware;
- (b) continued to operate the Company in the ordinary course;
- (c) communicated with the employees, customers and suppliers of the Xebec Group in order to maintain their operations and ensure a continued supply of goods;
- (d) continued ongoing discussions and exchanges of information with National Bank of Canada (“**NBC**”) and Export Development Canada (“**EDC**”), the Petitioners’ secured lenders, and their respective financial advisors in connection with the Petitioners’ interim financing requirements; which are paramount to the restructuring efforts of the Petitioners;
- (e) communicated with certain of their key customers with a view of negotiating an adjustment of certain terms of their respective contracts in order to alleviate the pressure on the Petitioners’ liquidity requirements through these CCAA proceedings;
- (f) entered into negotiations for an extension of the forbearance agreement with NBC until October 20, 2022;

- (g) launched the SISP with the assistance of NBF, as more fully described below; and
 - (h) has worked on a revised and updated cash flow statement covering the period until the Extension Date (as defined below), in consultation with the Monitor.
7. As of the date hereof, in accordance with the timeline set out in the bidding procedures (Schedule A to the Bidding Procedures Order), NBF has distributed a solicitation letter to approximately 199 potential targets, including potential investors and strategic acquirers.
8. Various parties are currently in the process of executing nondisclosure agreements in order to receive access to the virtual data room and the confidential information memorandum, which is to occur no later than October 6, 2022, following which interested parties will have until November 11, 2022 to deliver non-binding letters of intent, the whole as further provided for in the Bidding Procedures Order.

IV. **GROUNDINGS FOR THE EXTENSION OF THE STAY OF PROCEEDINGS**

9. Since the issuance of the First Day Orders, the Petitioners have acted, and continue to act in good faith and with due diligence.
10. The Stay Period currently expires on October 7, 2022.
11. It is respectfully submitted that the extension of the Stay Period to October 20, 2022 (the “**Extension Date**”) is required to provide the Petitioners with sufficient time to, *inter alia*:
- (a) continue the conduct of the SISP, with the assistance of NBF and under the supervision of the Monitor;
 - (b) complete the discussions with NBC and EDC and any other interested third parties to secure interim financing;
 - (c) continue the discussions with its key customers; and
 - (d) bring an application before this Honourable Court seeking the issuance of an amended and restated initial order, *inter alia*:
 - i) extending the Stay Period until on or about November 26, 2022;
 - ii) approving a key employee retention plan, a key vice-president retention plan and a key executive incentive plan, as well as a charge to secure the payment of the amounts due thereunder;
 - iii) amending paragraph 23c) of the FDIO in order to increase the authorization for Petitioners to pay, with the consent of the Monitor

or the Court, any pre-filing unpaid claims of suppliers it deems critical, up to an aggregate amount of \$1,000,000;

- iv) amending paragraphs 35 and 48 of the FDIO in order to increase the quantum of certain charges previously granted in the FDIO in amounts sufficient to cover the potential exposure of the beneficiaries of such charges during the Stay Period;
 - v) should negotiations for an interim financing be successful, approving such financing, as well as a charge to secure repayment thereof; and
 - vi) granting other relevant relief sought by the Petitioners.
12. 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.
13. 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.
14. No creditor will be unduly prejudiced by the extension sought.

V. CONCLUSION

15. The Monitor has informed the Petitioners that it supports the present Application.
16. 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.
17. 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* (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, October 4, 2022

Osler, Hoskin & Harcourt LLP

Osler, Hoskin & Harcourt LLP

Mtre. Sandra Abitan | Mtre. Julien Morissette |

Mtre. Ilya Kravtsov

Attorneys for Debtors / Petitioners

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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* (the "**Application**").
3. All of the facts alleged in the Application of which I have personal knowledge are true.
4. Where I 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 BY
TECHNOLOGICAL MEANS IN
MONTRÉAL, QUÉBEC, ON OCTOBER 4,
2022.



Lyne St-Amour
Commissioner for Oaths for the Province of
Québec



**NOTICE OF PRESENTATION
COMMERCIAL DIVISION**

TO: SERVICE LIST (See attached)

PRESENTATION OF THE PROCEEDING

TAKE NOTICE that the *Application for an Extension of the Stay of Proceedings* will be presented for adjudication before the Commercial Division of the Superior Court of Québec, in room 15.08, of the Montréal Courthouse, at the virtual calling of the roll on **October 7, 2022, at 9:00 am.**

HOW TO CONNECT TO THE VIRTUAL ROLL CALL

The coordinates for you to join the virtual calling of the roll in room 15.08 are 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 fill in your name and click on «Join now» («*Rejoindre maintenant*»). To facilitate the process, we invite you to fill in your name as follows:

Lawyers: M^e First name, Last name (Name of the party you represent)

Trustees: First name, Last name (Trustee)

Superintendent: First name, Last name (Superintendent)

Parties not represented by a lawyer: First name, Last name (specify: Plaintiff, Defendant, Petitioner, Respondent, Creditor, Opponent or Other)

For individuals attending a public hearing: the mention can be limited to: (public)

By telephone:

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

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

Conference ID: 820 742 874#

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

Videoconference ID: 11973653703

In person: If and only if you do not have access to one of the above mentioned technological means of connecting, you may then attend in room 16.10 of the Montréal Courthouse located at: 1, Notre-Dame Street East, Montréal, Québec.

DEFAULT TO PARTICIPATE IN THE VIRTUAL CALLING OF THE ROLL

TAKE NOTICE that if you wish to contest the proceeding, you must inform the initiator of the said proceeding in writing at the coordinates mentioned in the present Notice of Presentation at least 48 hours before the date of presentation 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.

OBLIGATIONS

Cooperation

TAKE NOTICE 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*).

Dispute prevention and resolution processes

TAKE NOTICE 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, October 4, 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

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ARRANGEMENT OF:**

XEBEC ADSORPTION INC.

-and-

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NORTEKBELAIR CORPORATION

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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

MONTREAL, October 4, 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: October 7, 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

[1] **CONSIDERING** the *Application for an Extension of the Stay of Proceedings* (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 First Report of the Monitor dated October 5, 2022;

[3] **CONSIDERING** the submissions of counsel;

[4] **GIVEN** the provisions of the CCAA;

THE COURT HEREBY:

[5] **GRANTS** the Application.

[6] **ORDERS** that the time for service of the Application is hereby abridged and validated so that the Application is properly returnable today mad hereby **DISPENSES** with further service thereof.

[7] **EXTENDS** the Stay Period (as defined in the First Day Initial Order rendered by the Court on September 29, 2022) to and including **October 20, 2022**.

[8] **DECLARES** that this Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.

[9] **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.

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

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

Christian Immer, J.S.C.

500-11-061483-224

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MTRE SANDRA ABITAN
MTRE JULIEN MORISSETTE
MTRE ILIA KRAVTSOV
(OSLER HOSKIN & HARCOURT LLP)
COUNSEL TO THE PETITIONERS

Hearing date: October 7, 2022

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, AFFIDAVIT, NOTICE
OF PRESENTATION, LIST OF EXHIBIT, EXHIBIT
P-1, (Sections 11 and 11.02 of the *Companies'
Creditors Arrangement Act*, RSC 1985, c C-36)**

ORIGINAL

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