

**SUPERIOR COURT
(Commercial Division)**

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: February 3, 2023

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

and
1396905 B.C. LTD
Impleaded Party (Buyer)

and
**THE REGISTRAR OF THE BRITISH COLUMBIA PERSONAL PROPERTY
REGISTRY**

Impleaded Party (Registrar)

**APPROVAL AND VESTING ORDER IN RESPECT OF THE ASSETS OF APPLIED
COMPRESSION SYSTEMS LTD.**

- [1] **CONSIDERING** the *Amended Application for the Issuance of a Second Amended and Restated Initial Order and of an Approval and Vesting Order* and (the “**Application**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (“**CCAA**”), the exhibits thereto, and the affidavit of Dimitrios Vounassis filed in support thereof;
- [2] **CONSIDERING** the Amended and Restated Initial Order issued by this Court on October 20, 2022;
- [3] **CONSIDERING** the Second Amended and Restated Initial Order (the “**Second ARIO**”) issued by this Court on February 3, 2023;
- [4] **CONSIDERING** the Fifth Report of Deloitte Restructuring Inc. (in such capacity, the “**Monitor**”) dated February 1, 2023;
- [5] **CONSIDERING** the submissions of counsel and the testimony of the Jean-François Nadon on behalf of the Monitor which lead the Court to the following findings and conclusions;
- (a) That pursuant to the SISP process, there was limited interest in the Seller’s assets and that the buyers are linked to the Seller’s management;
 - (b) That the sale will provide a cash payment;
 - (c) That the sale will permit to ensure continued employment for the Seller’s 23 employees and continuity for clients and suppliers. Save for the sale, immediate cost cutting measures would have been put in place, thereby negatively impacting employees, clients and suppliers.
 - (d) That it is appropriate that releases be provided to the Seller, its current and former directors, officers, employees legal Counsel and advisors as well as to the Monitor insofar as the Released Claims are concerned, taking into

account the criteria set out in *Lydian International Limited (Re)*, 2020 ONSC 4006 and followed amongst other in *Harte Gold Corp. (Re)*, 2022 ONSC 653;

- (e) More specifically, the releases are not overly broad since they relate to the Seller's operations. These releases are rationally connected to the purpose of maximizing recovery and reducing eventual claims against the D&O and Administration Charge. The Seller's directors made and continue to make significant contributions to the Petitioners restructuring. It is unlikely that the sale would have been successful were it not for the release provisions set out in subs. 7.6 of the agreement P-3. Finally, no one has contested the releases and in particular, the federal authorities do not object to the releases even though there were outstanding tax remittances at the time of the filing of the application for the First Initial Order.

[6] **GIVEN** the provisions of the CCAA:

[7] **CONSIDERING** that it is appropriate to issue an order approving the sale transaction (the "**Transaction**") contemplated by the agreement entitled Asset Purchase Agreement dated as of January 27, 2023 (the "**Purchase Agreement**") between Applied Compression Systems Ltd as seller (the "**Seller**") and 1396905 B.C. Ltd, as buyer, (the "**Buyer**"), a copy of which was filed as **Exhibit P-3** and **P-3A** (confidential) to the Application, and vesting in the Buyer the Purchased Assets.

THE COURT HEREBY:

[8] **GRANTS** the Application.

DEFINITIONS

[9] **DECLARES** that, unless otherwise defined, all capitalized terms in this Order shall have the meaning ascribed thereto in the Purchase Agreement.

SERVICE

[10] **ORDERS** that any prior delay for the presentation of the Application is hereby abridged and validated so that the Application is properly returnable today and dispenses with further service thereof.

[11] **PERMITS** service of this Order at any time and place and by any means whatsoever.

TRANSACTION APPROVAL

- [12] **ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Purchase Agreement by the Seller is hereby authorized and approved *nunc pro tunc*, with such minor alterations, changes, amendments, deletions or additions thereto as may be agreed to by the Seller and the Buyer, with the consent of the Monitor.

EXECUTION OF DOCUMENTATION

- [13] **AUTHORIZES** the Buyer and the Seller to perform all acts, sign all documents and take any necessary action to execute any agreement, contract, deed, provision, transaction or undertaking stipulated in the Purchase Agreement and any other ancillary document which could be required or useful to give full and complete effect thereto, including the Transaction.

AUTHORIZATION

- [14] **ORDERS and DECLARES** that this Order shall constitute the only authorization required by the Petitioners to proceed with the Transaction and that no shareholder or regulatory approval, if applicable, shall be required in connection therewith.

VESTING OF PURCHASED ASSETS

- [15] **ORDERS AND DECLARES** that upon the issuance of a Monitor's certificate substantially in the form appended as **Schedule "A"** hereto (the "**Monitor's Certificate**"), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Buyer, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges, hypothecs, mortgages, pledges, deemed trusts, assignments, judgments, executions, writs of seizure or execution, notices of sale, options, adverse claims, levies, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, taxes or other claims or encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"), including, without limiting the generality of the foregoing, all encumbrances created by order of this Court, all charges or security evidenced by registration, publication or filing pursuant to the Civil Code of Québec, the Personal Property Security Act of the Province of British Columbia, or any other applicable legislation providing for a security interest in personal or movable property, and those Claims listed on **Schedule "B"** hereto (all of which are collectively referred

to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "C"**).

- [16] For greater certainty, **ORDERS** that all of the Encumbrances, other than those listed on Schedule "C" hereto, affecting or relating to the Purchased Assets be cancelled and discharged as against the Purchased Assets, in each case effective as of the issuance of the Monitor's Certificate.
- [17] **ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.
- [18] **AUTHORIZES AND DIRECTS** the Monitor to use the net proceeds from the sale of the Purchased Assets to pay partially any outstanding invoices of the Monitor, the Monitor's legal counsel and the Petitioners' legal counsel covered by the Administration Charge (as defined in the Second ARIO), provided that such payments shall not affect nor reduce the quantum of the Administration Charge.
- [19] **ORDERS** the Monitor to file with the Court a copy of the Monitor's Certificate, as soon as practicable after issuance thereof.
- [20] **ORDERS** that the Monitor may rely on written notice from the Seller and the Buyer regarding the fulfillment of conditions to closing under the Purchase Agreement and shall have no liability with respect to the delivery of the Monitor's Certificate.
- [21] **ORDERS AND DIRECTS** the Monitor to serve on the service list in the within CCAA proceedings, post on the Monitor's website and file with the Court a copy of the Monitor's Certificate, as soon as practicable after the issuance thereof.

CANCELLATION OF SECURITY REGISTRATIONS

- [22] **ORDERS** that upon the issuance of the Monitor's Certificate, the Petitioners shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets, including filing such financing change statements in the *British Columbia Personal Property Security Registry* (the "**BC PPR**"), as may be necessary, from any registration filed against the Petitioners in the BC PPR, provided that the Petitioners shall not be authorized to effect any discharge that would have the effect of releasing any collateral other than the Purchased Assets, and the Petitioners shall be authorized to take any further steps by way of further application to this Court.

PROTECTION OF PERSONAL INFORMATION

[23] **ORDERS** that, pursuant to sub-section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 or any similar provision of any applicable provincial legislation (collectively, the “**Applicable Privacy Laws**”), the Petitioners and the Monitor are authorized to disclose and transfer to the Buyer the personal information in the custody or control of the Petitioners set out in the Purchase Agreement (the “**Disclosed Information**”). The Buyer shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Petitioners.

[24] **ORDERS** that the Buyer shall:

- (a) maintain and protect the Disclosed Information with security safeguards appropriate to the Disclosed information and as may otherwise be required by Applicable Privacy Laws;
- (b) use and disclose the Disclosed Information for the purposes for which the Disclosed Information was collected by the Petitioners and as may otherwise be permitted by Applicable Privacy Laws; and
- (c) give effect to any withdrawals of consent of the individuals to whom the Disclosed Information relates.

VALIDITY OF THE TRANSACTION

[25] **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 vesting of Purchased Assets contemplated in this Order, as well as the execution of the Purchase Agreement authorized by this Order, and the payments, distributions and disbursements 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 Buyer, or the Monitor.

RELEASES

[26] **ORDERS** that effective as of the issuance of the Monitor's Certificate (a) the current and former directors, officers, employees, legal counsel and advisors of the Seller and (b) the Monitor and its legal counsel (in such capacities, collectively, the "**Released Parties**") shall be deemed to be forever irrevocably released and discharged from any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the issuance of the Monitor's Certificate or undertaken or completed in connection with or pursuant to the terms of this Order in respect of, relating to, or arising out of (i) the business, operations, assets, property and affairs of the Seller wherever or however conducted or governed, the administration and/or management of the Seller, these CCAA proceedings and/or the Chapter 15 case commenced in the United States Bankruptcy Court for the District of Delaware, as they relate to the Seller, or (ii) the Purchase Agreement and any agreement, document, instrument, matter or transaction involving the Seller arising in connection with or pursuant to any of the foregoing, and/or the consummation of the Transactions (collectively the "**Released Claims**"), which Released Claims shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties; provided that, nothing in this paragraph shall waive, discharge, release, cancel or bar (x) any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA or claim with respect to any act or omission that is determined by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, or (y) any obligations of any of the Released Parties under or in connection with the Purchase Agreement and/or any agreement, document, instrument, matter or transaction involving the Seller arising in connection with or pursuant to any of the foregoing.

THE MONITOR

[27] **DECLARES** that the Monitor shall incur no liability as a result of acting in accordance with this Order, other than any liability arising out of or in connection with the gross negligence or willful misconduct of the Monitor.

- [28] **DECLARES** that no action lies against the Monitor by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Monitor or belonging to the same group as the Monitor shall benefit from the protection arising under the present paragraph.
- [29] **DECLARES** that nothing contained herein shall require the Monitor to occupy or to take control, or to otherwise manage all or any part of the assets of the Petitioners. The Monitor shall not, as a result of this Order, be deemed to be in possession of any assets of the Petitioners within the meaning of environmental legislation, the whole pursuant to the terms of the CCAA.
- [30] **ORDERS AND DECLARES** that no provision of this Order is intended to appoint the Monitor as an officer, director or employee of any of the Petitioners, de facto or otherwise, or to create a fiduciary duty to any party, including any creditor or shareholder of the Petitioners. Additionally, nothing in this Order shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, or receiver and manager of any of the Petitioners and any distribution made to the creditors of the Petitioners will be deemed to have been made by the Petitioners.

SEALING

- [31] **ORDERS** that the Purchase Agreement, **Exhibit P-3A** shall be filed under seal and kept confidential until further order of this Court.

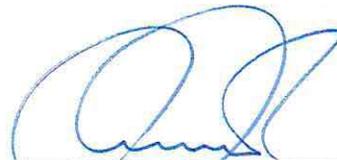
GENERAL

- [32] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.
- [33] **DECLARES** that the Petitioners or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of this Order on notice only to each other and the Buyer.
- [34] **DECLARES** that the Petitioners and the Monitor shall be entitled to seek leave to vary this Order upon such terms and such notice as this Court deems just.
- [35] **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. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested

to make such orders and to provide such assistance to the Petitioners and the Monitor as may be necessary or desirable to give effect to this Order in any foreign proceeding, to assist the Petitioners, the Monitor and their respective agents in carrying out this Order.

[36] **ORDERS** provisional execution of this Order notwithstanding any appeal and without security.

[37] **THE WHOLE** without costs.



Christian Immer, J.S.C.

MTRE. SANDRA ABITAN
MTRE. JULIEN MORISSETTE
MTRE. ILIA KRAVTSOV
(OSLER HOSKIN & HARCOURT LLP)
Attorneys for the Petitioners

Hearing date: **February 3, 2023**

SCHEDULE A
DRAFT CERTIFICATE OF THE MONITOR

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Commercial Division)

(Sitting as a court designated pursuant to
the *Bankruptcy and Insolvency Act*, RSC
1985, c B-3)

No.: 500-11-061483-224

**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
Debtor/Petitioners

-and-

DELOITTE RESTRUCTURING INC.
Monitor

CERTIFICATE OF THE MONITOR

RECITALS:

WHEREAS on September 29, 2022, the Debtors/Petitioners Xebec Adsorption Inc. & Al. filed an Application pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended ("**CCAA**") and Deloitte Restructuring Inc. was appointed as monitor thereto (the "**Monitor**").

WHEREAS on February 3, 2023, the Court issued an Order (the "**Approval and Vesting Order**") authorizing and approving, *inter alia*, the execution of a Asset Purchase Agreement by and among Applied Compression Systems Ltd as Seller (the "**Seller**") and 1396905 B.C. Ltd as buyer (the "**Buyer**"), a copy of which was filed in the Court record (the "**Purchase Agreement**"), and into all the transactions contemplated therein (the "**Transaction**") with such non-material alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Monitor.

WHEREAS the Approval and Vesting Order contemplates the issuance of this Certificate of the Monitor once (a) the Purchase Agreement has been executed and delivered; and (b) the Purchase Price (as defined in the Purchase Agreement) has been paid by the Buyer to the Seller; and (c) all the conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

THE MONITOR CERTIFIES THAT IT HAS BEEN ADVISED BY THE SELLER AND THE BUYER AS TO THE FOLLOWING:

- (a) the Purchase Agreement has been executed and delivered;
- (b) the Purchase Price (as defined in the Purchase Agreement) payable upon the closing of the Transaction and all applicable taxes have been paid; and
- (c) all conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

This Certificate was issued by the Monitor on _____ [DATE].

Deloitte Restructuring Inc., in its capacity as Monitor
to the Petitioners, and not in its personal capacity.

Per: _____

Name: _____

Title: _____

SCHEDULE B

ENCUMBRANCE TO BE VESTED

PPSA Security Agreement with the National Bank of Canada (BC Personal Property Registry no. 779666M)

SCHEDULE C

PERMITTED ENCUMBRANCE

PPSA Security Agreement with Ford Credit Canada Company with Vehicle Collateral
(BC Personal Property Registry no. 589688K)