

**SUPERIOR COURT
(Commercial Division)**

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

COPIE CERTIFIÉE CONFORME
AU DOCUMENT DÉTENU PAR LA COUR

CHILA ZOLA MANGALA
Personne désignée par le greffier

No.: 500-11-061483-224

16 mars 2023

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

-and-

**LONDON RNG PROJECT I LP
LONDON RNG PROJECT I GP INC.**

Respondents

-and-

NATIONAL BANK OF CANADA

Mise-en-cause

ORDER DIRECTING PAYMENT *IN TRUST* TO THE COURT-APPOINTED MONITOR

- [1] **CONSIDERING** the *Urgent Application for the issuance of an order directing payment in trust to the Court-appointed Monitor* dated March 14, 2023 (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. Mike Munro, filed in support thereof;
- [2] **CONSIDERING** the submissions of counsel;
- [3] **GIVEN** that it is appropriate and justified that any payment to be made pursuant to the irrevocable standby letter of credit No. OGUA58735 be directed to the Monitor *in trust*, until determination of the parties' respective rights under such letter of credit is made in a final judgment of a court or other forum having jurisdiction or until an agreement is entered into by the parties (the "**LC Dispute**");
- [4] **GIVEN** Section 11 of the CCAA;
- [5] **GIVEN** the consent of the parties;

THE COURT HEREBY:

- [6] **GRANTS** the Application.
- [7] **ORDERS** National Bank of Canada to direct any payment to be made pursuant to the irrevocable standby letter of credit No. OGUA58735 (the "**Letter of Credit**") to Deloitte Restructuring Inc., in its capacity as court-appointed monitor, in trust;
- [8] **ORDERS** Deloitte Restructuring Inc. in its capacity as court-appointed monitor, to maintain *in trust* in its trust account (the "**Monitor's Trust Account**") any payment made by National Bank of Canada in connection with the Letter of Credit until determination of the parties' respective rights under the Letter of Credit is made in

a final judgment of a Court or other forum having jurisdiction or until an agreement is entered into by the parties;

- [9] **DECLARES** that this Order, and the fact of the making of this Order, is without prejudice to and reserves all rights and claims of the parties on all matters and issues, including with respect to the Letter of Credit (and any funds paid to Deloitte Restructuring Inc., pursuant to this Order) and the proper forum to adjudicate upon those rights and claims;
- [10] **PRAYS ACT** of Respondents', London RNG Project I LP acting through its general partner London RNG Project I GP Inc., and London RNG Project I GP Inc., (i) consent to the present Order and (ii) agreement that the payment to be made by National Bank of Canada under the Letter of Credit be directed to Deloitte Restructuring Inc, in its capacity as court-appointed monitor, trust account;
- [11] **ORDERS** that the payment to be made to the Monitor's Trust Account by National Bank of Canada pursuant to the present Order shall be deemed to be made to the beneficiary of the Letter of Credit, London RNG Project I LP, in accordance and in respect with the terms and conditions of the Letter of Credit and in favour of London RNG Project I LP and that such payment has the same effect, for National Bank of Canada and the Credit Agreement dated as of February 23, 2021, entered into among Xebec Adsorption Inc., as borrower and National Bank of Canada, as lender, as amended from time to time and (the "**Credit Agreement**"), the Loans Documents and the EDC Account PSG (as those term are defined in the Credit Agreement) and any all other banking documents, security and guarantees, as it would have if the payment was directly made to London RNG Project I LP;
- [12] **ORDERS**, for greater certainty and notwithstanding paragraph [9] of the present Order, that after payment of the Letter of Credit in accordance with the terms of this Order, National Bank Canada shall have no further obligation, liability or responsibility whatsoever, direct or indirect, under the Letter of Credit and shall be forever released and discharged of and from any and all claims and demands of every nature and kind at law or in equity or under any statute, actions, causes of action, suits, debts, dues, sums of money, damages, losses, indemnities and costs, which London RNG Project I LP and London RNG Project I GP Inc. and the Petitioners (collectively, the "**Releasors**") or any one or more of them now have or ever had, arising out of or related to the dealings or transactions in respect of the Letter of Credit and any dealings with any of the Releasors relating to the Letter of Credit prior to the date hereof.
- [13] **ORDERS**, for greater certainty, that National Bank of Canada, Export Development Canada and any other party preserve their rights on any excess funds remaining in the Monitor's Trust Account following final resolution of the LC Dispute either by final judgment of a Court or other forum having jurisdiction or by agreement made by the Respondents and the Debtors/Petitioners.

- [14] **ORDERS** that any prior delay for the presentation of the Application is hereby abridged and validated so that the Application is properly returnable March 16, 2023 and hereby dispenses with further service thereof;
- [15] **PERMITS** service of this Order at any time and place and by any means whatsoever;
- [16] **ORDERS** that Exhibits P-2 and P-3 to the Application shall be filed under seal and kept confidential until further order of this Court;
- [17] **THE WHOLE** without costs against any party.



CHRISTIAN IMMER, J.S.C.

MTRE. SANDRA ABITAN
MTRE. JULIEN MORISSETTE
MTRE. JESSICA HARDING
MTRE. JOSY-ANN THERRIEN
(OSLER, HOSKIN & HARCOURT LLP)
Attorneys for the Debtors / Petitioners

Hearing date: March 16, 2023