

SUPERIOR COURT

"Commercial Division"

CANADA
PROVINCE OF QUEBEC
DISTRICT OF ABITIBI

No: 615-11-001402-140

DATE: November 7, 2014

IN THE PRESENCE OF: Mtre VASIL PETRISHKI, REGISTRAR

IN THE MATTER OF THE PROPOSAL OF:

MINES AURBEC INC.

Debtor

and

SAMSON BÉLAIR / DELOITTE & TOUCHE INC.

Trustee

JUDGMENT

On Debtor's motion to Authorize the Sale of Assets pursuant to s. 65.13 of the
Bankruptcy and Insolvency Act

The Motion

[1] The Debtor Mines Aurbec Inc. ("Aurbec") seeks the issuance of an authorization of a sale of assets outside of the ordinary course of business by a company that had filed a notice of intention to make a proposal.

[2] Aurbec would like to sell the mining equipment identified in Appendix A of the *convention d'achat d'actifs*¹. According to the Affidavit of Mr. Gregory Robert Struble, filed on the Motion, Aurbec seeks the sale of the mining equipment which is not being used in order to generate liquidity to fund the proposal Aurbec intends to make.

[3] The Proponent doesn't dispute that such a liquidation of assets constitutes a sale outside of the ordinary course of business for Aurbec. Hence this Motion to authorize the sale of assets.

Background

[4] Aurbec is a mining and mining exploration company. Its business activities relate to the exploration, development and operation of two gold mining sites (Sleeping Giant and Vezza), both located in the district of Abitibi.

[5] Aurbec is a subsidiary of Minéraux Maudore Ltée ("Maudore"), a publicly-owned Quebec junior gold company.

[6] On September 8, 2014, both Aurbec and Maudore filed notices of their intention to make a proposal to their creditors under the *Bankruptcy and Insolvency Act*² ("BIA") with Samson Bélair /Deloitte & Touche Inc. agreeing in both instances to act as proposal trustee ("Trustee"). Court orders have been made on October 8, 2014, extending the period for Aurbec and Maudore to make their proposals until November 21, 2014.

[7] Aurbec would like to sell the mining equipment identified in Appendix A of the *convention d'achat d'actifs*³. According to the Affidavit of Mr. Gregory Robert Struble, filed on the Motion, Aurbec seeks the sale of mining equipment which is not being used in order to generate liquidity to fund the proposal the Debtor intends to make.

Jurisdiction of the Registrar to hear a motion under s. 65.13 (1) BIA

[8] In the case at bar, all appropriate parties were involved and the Debtor gave notice of the Motion to the following parties: to the Trustee; to Revenu Quebec, the only creditor which had asked the Trustee for notice of future proceedings; to Cyrus Capital Partners L.P., which holds security⁴ on the equipment identified in Appendix A of the *convention d'achat d'actifs*; finally, Aurbec served the Motion to Entrepreneur Minier Promec Inc. and Gestion Abitibi inc. which may be affected by the proposed sale, even though they do not hold any security on the assets to be sold in the proposed sale.

[9] All secured creditors were served with this Motion pursuant to s. 65.13 (3) of the BIA. Section 65.13 (3) of the Act does not require service on unsecured creditors.

¹ Exhibit P-5

² Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

³ Exhibit P-5

⁴ In order to respect the requirements of s.65.13 (3), the Proponent gave notice to the secure

[10] On November 7, 2014, the Motion proceeded as unopposed. A registrar in Bankruptcy has the jurisdiction under s. 192 (1) f) BIA to hear and determine any unopposed matter⁵. Thus, I have jurisdiction to hear the Motion.

Factors to be considered

[11] The factors to be considered by the Court in respect of this motion are set forth in s. 65.13 (4) and (5) of the BIA, which provide:

"65.13(4) Factors to be considered

In deciding whether to grant the authorization, the court is to consider, among other things,

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the trustee approved the process leading to the proposed sale or disposition;
- (c) whether the trustee filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

(5) Additional factors – related persons

If the proposed sale or disposition is to a person who is related to the insolvent person, the court may, after considering the factors referred to in subsection (4), grant the authorization only if it is satisfied that

- (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the insolvent person; and
- (b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition."

[12] In the case at bar, the proposed sale is not to a person related to Aurbec⁶. Therefore, the factors listed in s. 65.13 (4) of the BIA are not a condition to the Court's authority to approve, if appropriate, a sale of assets under s. 65.13 (1) of the BIA.

[13] Section Section 65.13(4) BIA sets out the factors which the Court is to consider in exercising its discretion to authorize such a sale, or not. All six of those factors were addressed by counsel or in the materials, or both.

⁵ *Re: Outdoor Broadcast Networks Inc.*, 2010 ONSC 5647, Registrar Nettie

⁶ Para. 10 of the Affidavit of Mr. Gregory Robert Sruble

[14] The process leading to the sale was reasonable, the Trustee was in support of the proposed sale and had filed the requisite report⁷.

[15] On the point of creditor consultation, I note that Cyrus Capital Partners L.P., which holds security on the equipment listed in Appendix A of the *convention d'achat* d'actifs and is in first rank on all Aurbec's assets except for the immovable portion of Vezza, has given its consent⁸. The creditors which hold security on the immovable portion of Vezza, Entrepreneur Promec Inc. and Gestion Abitibi inc. were given notice of the present motion.

[16] I took into account the position of the Proponent's counsel, that *prima facie* the insolvent person can and will make the payments that would have been required under paragraphs 60 (1.3) a) and 60 (1.5) a) of the BIA if the court had approved the proposal. Thus, considering all the evidence before me, I am satisfied with the extent to which the creditors were consulted.

[17] Presentation of, or ability to present a proposal is not a condition to the exercise of the Court's jurisdiction under s. 65.13 of the BIA to authorize a sale of assets⁹.

[18] In the situation at hand, the factors stipulated by subsections 65.13 (4) e) and f) have also been met as it appears from the Trustee's report (para. 17 to 22) The Trustee expresses the opinion that the Offer is reasonable and the reasonableness of the consideration is confirmed by the appraisal of an auction company specialized in the mining equipment¹⁰. The appraisals of Corporate Assets for the equipment listed in Appendix A of the *convention d'achat* d'actifs given a forced liquidation value scenario and an orderly liquidation value scenario strongly support the recommendation of the Trustee.

[19] Given the appraisals, it appears that the consideration to be paid under the *convention d'achat* d'actifs is reasonable and fair.

[20] I am satisfied on the material filed that all applicable requirements of s. 65.13 of the BIA have been met and that the moving party has met the burden of proof by preponderance of probabilities¹¹.

[21] The final issue to be addressed is a minor clerical error in the Motion. The conclusions of the motion read as follow:

"GRANT the present motion.

⁷ Report of the trustee on the sale of assets outside the ordinary course of business (section 65.13 of the BIA), dated October 31, 2014, Exhibit P-8

⁸ Idem, para. 16 of the Trustee's report

⁹ *Re Komtech Inc*, 2011 ONSC 3230 Canlii, J. Kane

¹⁰ Appendix D of the Trustee's report

¹¹ Sections 2803 and 2804 of the *Civil code of Quebec*

"AUTHORIZE the Debtor to sell, outside the ordinary course of its business, the assets identified in the *convention d'achat d'actifs* dated November 30, 2014 (Exhibit P-5)."

My underlining.

[22] It appears from the copy of the *convention d'achat d'actifs* (Exhibit P-5), that the sale of assets was signed by both parties on October 30, 2014.

[23] Section 468 of the *Code of Civil Procedure* of Quebec provides:

"The court cannot adjudicate beyond the conclusions; however, it may correct incorrect terminology in the conclusions, in order to give them their true designation in the light of the facts alleged"

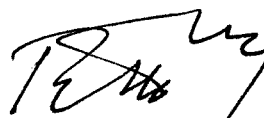
[24] Therefore, I correct *proprio motu* under s. 468 *in fine* of the *Code of Civil Procedure of Quebec* the clerical error in the conclusions of the Motion.

[25] **FOR THESE REASONS, THE COURT:**

[26] **GRANTS** the Motion.

[27] **AUTHORIZES** the Debtor to sell, outside the ordinary course of its business, the assets identified in the *convention d'achat d'actifs* dated October 30, 2014 (Exhibit P-5).

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



Mtre Vasil Petrishki,
Registrar

Mtre Neil Peden
Woods s.e.n.c.r.l. 2000 avenue McGill College, Bureau 1700, Montréal QC H3A 3H3
Attorney for the Petitioner

Mr. Jean-François Nadon
Samson Bélair/Deloitte & Touche Inc., 1 Place Ville-Marie, suite 3000, Montréal,

Mr. Jean-François Nadon
Samson Bélair/Deloitte & Touche Inc., 1 Place Ville-Marie, suite 3000, Montréal,
Québec, H3B 4T9
Trustee

Date of hearing: November 7, 2014