

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
COURT NO. : 500-11-022700-047

SUPERIOR COURT

(Sitting as Tribunal designated under the
Companies' Creditors Arrangement Act)

IN THE MATTER OF THE PLAN OF ARRANGEMENT OF:

Eaux Vives Harricana Inc., legal person duly constituted under the laws of Québec, having its head office at 11 Chemin des Sablières, Saint-Mathieu-d'Harricana, Province of Québec, District of Abitibi, J0Y 1M0;

- and -

EVH U.S.A. Inc., legal person, duly constituted under the laws of Delaware, U.S.A., having a place of business at 17821 East 17th Street, Suite 193, Tustin, California, 92780, U.S.A.;

- and -

Les Sources Périgny Inc., legal person duly constituted under the laws of Québec, having its head office at 11 Chemin des Sablières, Saint-Mathieu-d'Harricana, Province of Québec, District of Abitibi, J0Y 1M0;

Debtors

- and -

RSM Richter Inc., a body politic and corporate, duly incorporated according to law, having a place of business at 2 Place Alexis-Nihon, 3500 de Maisonneuve Blvd. West, 22nd Floor, in the City of Montréal, Province of Québec, H3Z 3C2;

Monitor

REPORT OF THE MONITOR SUBMITTED IN CONJUNCTION WITH MOTION WITH RESPECT TO THE SALE OF CERTAIN ASSETS AND THE APPOINTMENT OF AN INTERIM RECEIVER

I, Yves Vincent, FCA, of the City of Montréal, from the office of RSM Richter Inc. ("Richter"), acting as the Monitor pursuant to the Court filing made by Eaux Vives Harricana Inc., EVH U.S.A. Inc. and Les Sources Périgny Inc. (collectively "EVH" or the "Debtors"), hereby report to the Court as follows:

1. THAT, on March 19, 2004, the Debtors filed with the Québec Superior Court a motion for issuance of an initial order pursuant to the *Companies' Creditors Arrangement Act* ("CCAA"). On that same date, Mr. Justice François Rolland (as he then was) issued an initial order (hereinafter the "Initial Order"), *inter alia* appointing RSM Richter Inc. as monitor (the "Monitor").

2. THAT, the Debtors have filed to date seven (7) motions requesting an extension of time for the filing of the Plan of Arrangement which have all been granted by the Court. The last Order, rendered on May 27, 2005, extended the stay of proceedings until July 29, 2005.
3. THAT, on July 22, 2005, the Debtors filed a motion requesting a further extension of time until December 16, 2005 for the filing of the Plan of Arrangement.
4. THAT, on July 22, 2005, the Debtors filed a motion with respect to the sale of certain assets and the appointment of RSM Richter Inc. as interim receiver ("Motion for Sale") to one of the honorable judges of the Superior Court, sitting in Commercial Division, in and for the District of Montréal, the whole to obtain authorization of the Court to conclude a sale transaction with Eaux Vives Water Bottling Corp., an entity affiliated with Morgan Stanley & Co.

SALE OF ASSETS

The current proposed sale transaction results from a lengthy process which can be summarized as follows:

5. In early 2004, EVH terminated its operations. EVH initially retained the services of Scotia Capital Inc. ("Scotia") to market its assets and find a buyer.

- **Initial Marketing Process**

6. Scotia did advise the Monitor that the results of the initial marketing process were as follows:
 - a) They discussed the possibility of the purchase of the assets of EVH with over sixty (60) prospective parties, including North American and international beverage companies, bottled water companies, bottled water industry participants, financial buyers and distressed asset purchasers and liquidators;
 - b) Between April 6, 2004 and June 16, 2004, more than thirty (30) parties received information packages from Scotia regarding EVH and its assets;
 - c) During the same time period, fourteen (14) parties executed confidentiality agreements and, out of such fourteen (14) parties, nine (9) visited the data room established for the sale process in order to examine the books, records and other documents regarding EVH therein contained, and seven (7) such parties conducted site visits of EVH's plant;
 - d) A total of four (4) formal offers were received on or before June 23, 2004 by Scotia pursuant the aforementioned marketing process;
 - e) Further to the receipt of the offers and pursuant to the recommendation of Scotia, EVH had discussions and negotiations with the retained offeror in order to obtain the most favorable offer.

7. We were further advised by the representatives of EVH that:

- a) On July 30, 2004, an offeror, pursuant to the initial marketing process, submitted an offer and thereafter a revised offer, which was accepted by EVH;
- b) Some unexpected financing problems were encountered by the offeror;
- c) Despite a demand letter and further communications, the offeror did not comply with its obligations pursuant to the offer, and EVH had no choice but to terminate the negotiations with the offeror and to pursue other options.

- **Second Marketing Process**

8. As a result of the failure to close the contemplated sale transaction, throughout the months of October and November 2004, Scotia and EVH re-established communications with all those parties that had been identified as potential buyers.

9. After having examined the alternatives available and due to the fact that interested parties had manifested their interest to acquire EVH's assets, EVH decided, in collaboration with the Monitor and Scotia, to launch a new sale process and, as such, to canvass, once again, the market in order to attempt to complete a sale transaction.

10. The highlights of the second marketing process initiated by Scotia, EVH and the Monitor can be summarized as follows:

- a) The delay to submit offers was set to November 30, 2004;
- b) Several new parties, as well as those previously contacted, were canvassed by either EVH, Scotia or the Monitor;
- c) The Monitor, EVH and Scotia have dealt with six (6) interested parties and potential buyers;
- d) The most favorable offer was not retained since the offeror was unable to make a deposit to secure its undertaking under the offer as well as to provide the proof of availability of funds to complete the transaction.

- **Extension of Marketing Process**

11. The initial intention of the Monitor, EVH and Scotia was to make a final decision regarding the offers received by December 20, 2004. However, in the interests of fairness to the parties remaining in the process and with a view of concluding a transaction, it appeared that it would be beneficial to pursue such discussions through January 2005. The interested parties were advised by a letter sent on December 22, 2004 that it was the Monitor's intention to deal with those offerors who would submit an acceptable offer in form and substance by January 21, 2005.

12. A total of four (4) offers and two (2) letters of interest were submitted to the Monitor on or before January 21, 2005.

- **Quebec Waters Inc. Offer**

13. After having reviewed the offers, the Monitor and EVH, with the assistance of Scotia, came to the conclusion that the offer presented by Quebec Waters, Inc. was the best offer. Furthermore, the purchase price offered by Quebec Waters, Inc. was greater than that provided for in any other offer received.
14. On January 21, 2005, EVH accepted the offer submitted by Quebec Waters Inc., as amended.
15. An order was granted, on February 23, 2005, by the Quebec Superior Court approve the sale of EVH's assets to Quebec Waters, Inc.
16. The Debtors and the Monitor made arrangements for closing, ultimately scheduled for May 4, 2005. We were informed by the legal representative of the Debtors that a representative of Quebec Waters, Inc. arrived at the time and place scheduled for closing and indicated that no funds were available and that closing would not occur.
17. As a result of such a default , we were advised of Quebec Waters Inc.'s failure to complete de sale transaction and instructed by EVH to confiscate a \$1,000,000 deposit held in our trust account which deposit was previously advanced by Quebec Waters, Inc. pursuant to their offer to purchase.

- **Eaux Vives Water Bottling Corp. Offer**

18. On May 25, 2005 and as further revised on May 26, 2005, following discussions with Morgan Stanley & Co., the Monitor received a signed expression of interest, indicating that they were "highly interested" in acquiring EVH's assets (the "EOI").
19. In view of the content of the EOI, as well as taking to account previous canvassing results and terms and conditions of previous offers received, EVH and the Monitor concluded that it was not necessary to initiate a new sale process and canvass the market once again.
20. Pursuant to the EOI and further negotiations with Morgan Stanley & Co., on July 15, 2005, the entity affiliated with Morgan Stanley & Co. selected as its nominee for the transactions, Eaux Vives Water Bottling Corp., (the "Purchaser") entered into an asset purchase agreement ("APA") with EVH, pursuant to which EVH agreed to sell all of its assets to the Purchaser.
21. The financial considerations of the APA are summarized as follows:
 - a) The total purchase price is \$18,000,000 payable in cash for EVH's Assets as defined in the offer. It will be allocated between the assets at the discretion of the Offeror;
 - b) A deposit of \$500,000, advanced by the Purchaser upon signature of the APA, is being held in Trust by Davies Ward Phillips and Vineberg;
 - c) Within 24 hours of the obtainment of certain consents and authorizations, the balance of the purchase price shall be payable to the Monitor.

22. The conclusion of the transactions therein contained in the APA is also conditional, amongst others, on the following:
- a) The Superior Court shall authorize the sale of the assets to the Purchaser as contemplated, by way of final judgment without any possibility of appeal, or executory notwithstanding appeal;
 - b) The appointment of the Monitor as Interim Receiver to proceed to the sale of the assets to the Purchaser;
 - c) An authorization to be granted by the *Commission de protection du territoire agricole* pursuant to *An Act Respecting the Acquisition of Farm Land by Non-Residents (Quebec)* for the transfer of land, which was granted on July 22, 2005;
 - d) The sale of the assets shall convey to the Purchaser a good and valid title, free and clear of any prior claim, hypothec, encumbrance or other security;
 - e) The non-occurrence of a material adverse effect to the assets of EVH between the time of execution of the APA and the closing date;
 - f) Closing to take place no later than September 30, 2005.

MONITOR'S POSITION

23. Given the facts as discussed previously, the Monitor would comment as follows:

- **Validity of Value**

24. The purchase price offered reflects the current market conditions and the best value that may be obtained from a willing and motivated buyer, taking into account that EVH ceased its commercial activities in February 2004 and has been under CCAA protection since March 2004.

25. Should the proposed sale transaction with the Purchaser not be completed, the market conditions will most likely dictate a forced liquidation scenario.

26. Given the state of the affairs of EVH and its current legal situation, this proposed sale transaction is in the best interest of the creditors since a forced liquidation of its assets would generate lower realization results for the creditors as compared to the purchase price contemplated in the APA.

- **Time is of the Essence**

27. Given the lack of available new financing from its shareholders, selling the Debtors' assets as a business unit is the best available option to the Debtors in order to maximize the value for the creditors.

28. Since the Initial Order, EVH's financial situation has not improved.
29. The funding provided by RBC under the DIP financing arrangement is limited and therefore, EVH cannot afford to extend the marketing process much longer.
30. The Purchaser wishes to restart the operations at the Saint-Mathieu-d'Harricana water plant on a timely basis.
31. The ability of EVH to make and fund a plan of arrangement is predicated on the closing of the transaction contemplated in the offer.

• **Conclusion and Recommendation**

32. THAT, Richter respectfully concludes that the proposed transaction be approved for the following reasons:
 - a) The purchase price is, under the circumstances, fair and commercially reasonable and the sale price achieved was arrived at in a commercially reasonable manner, as:
 - The assets of EVH have been widely marketed for a considerable length of time;
 - EVH has acted in good faith throughout the process;
 - The most likely purchasers of EVH have been identified and contacted. Further marketing efforts are unlikely to result in the identification of new prospective purchasers;
 - The purchase price offered exceeds the forced liquidation value of EVH's assets;
 - The proposed sale transaction is in the best interest of the creditors of EVH;
 - b) The transaction allows to restart the operations at the Saint-Mathieu d'Harricana plant and preserving and creating additional jobs in the province of Quebec;
 - c) If the transaction is not concluded in a timely manner, the Debtors do not have the financial resources to continue to maintain the safeguard of its assets and, as such, this would most likely result in the forced liquidation of its assets.
33. THAT, in this regard, Richter respectfully recommends:
 - a) that the Court acknowledges that the process was commercially reasonable, the Purchaser's Offer is commercially acceptable and the price for the assets is fair; that the Court authorizes Richter, the Monitor, in its capacity as Interim Receiver and acting on behalf of EVH, to:
 - sell, transfer and cede to the Purchaser all the right, title and interest of EVH in and to all of the Assets pursuant to the provision of the APA, subject to any modifications agreed between the parties and which do not substantially affect the transactions contemplated;
 - accordingly, perform all acts, sign all documents, including the APA, and take any necessary dispositions to execute any dispositions, transactions or engagements stipulated in the APA or any related documents;

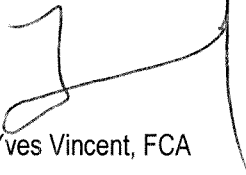
- collect the proceeds of sale (the "Proceeds") and maintain them in escrow until their distribution pursuant to the Plan of arrangement, subject to the content of the Order sought and to any further order of this Court authorizing such distribution; and
- b) that the Motion for Sale to be granted by the Court.

DATED AT MONTRÉAL, this 28th day of July 2005

RSM Richter Inc.

(Estate formerly accepted under the responsibility of Richter & Associés Inc.)

Court-Appointed Monitor



Yves Vincent, FCA