

**C A N A D A**

**PROVINCE OF QUEBEC**  
District of Montreal

**SUPERIOR COURT**  
(Commercial Division)

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« In Bankruptcy and insolvency »

**N° : 500-11-038367-104**

**DATE : APRIL 29, 2010**

**PRESENT: ME PIERRE PELLERIN, REGISTRAR**

**IN THE MATTER OF THE NOTICE OF  
INTENTION TO MAKE A PROPOSAL  
OF :**

**EXELTECH CANADA INC.,**

Debtor/Respondent

-and-

**ROYAL BANK OF CANADA**

Petitioner

-and-

**BUSINESS DEVELOPMENT BANK OF  
CANADA,**

Mise-en-cause

-and-

**RSM RICHTER INC.,**

Trustee, Interim Receiver and Receiver

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**ORDER**

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1. **SEEING** Petitioner's Motion seeking the appointment of a receiver and the authorization to sell property of the Debtor, the affidavit and exhibits filed in support thereof;
2. **SEEING** the submissions of counsel for the Petitioner;
3. **SEEING** the absence of contestation;

**FOR THESE REASONS, THE COURT :**

4. **GRANTS** the present motion (the "**Motion**") seeking the appointment of a receiver and the authorization to sell property of ExelTech Canada Inc. (the "**Debtor**");
5. **EXEMPTS** the Petitioner, Royal Bank of Canada (the "**Bank**"), from having to serve the Motion and from any notice of presentation;
6. **PERMITS** service of the present judgment at any time and place and by any means whatsoever;
7. **APPOINTS** RSM Richter Inc. (Mr. Yves Vincent and Gilles Robillard, designated trustees), licensed trustee, as receiver to all of the assets of the Debtor (the "**Receiver**"), pursuant to section 243 of the *Bankruptcy and Insolvency Act* (the "**BIA**"), having notably the following powers:
  - a) continue to exercise all the powers already granted by this Court to RSM Richter Inc. (Mr. Yves Vincent and Gilles Robillard, designated trustees), pursuant to a motion filed by the Bank on February 8, 2010, whereby it was appointed as interim receiver to the Debtor's assets, pursuant to Court orders rendered on February 9, 2010, and February 10, 2010, in court file number 500-11-038367-104 by Mtre Pierre Pellerin, Registrar, but as Receiver pursuant to section 243 of the BIA;
  - b) accept and consent to, for and on behalf of the Debtor, the asset purchase agreement, by and between the Receiver, as seller, Pemco World Air Services (Canada) Inc., as purchaser (the "**Purchaser**"), attached to the Motion as Exhibit R-7 (the "**Asset Purchase Agreement R-7**"), subject to any modifications agreed to between the parties which do not substantially affect the value of the contemplated transaction;
  - c) if need be, take all the conservatory measures and steps required to protect all assets described and defined as "Equipment" under the Asset Purchase Agreement R-7 (the "**Purchased Assets**"), to be sold pursuant to the Asset Purchase Agreement R-7;

- d) perform all acts, sign all documents, including the Asset Purchase Agreement R-7 and any other related or ancillary documents (including but not limited to a receipt and acquittance for the purchase price when paid), and take any necessary dispositions to execute any dispositions, transactions or engagements stipulated in the Asset Purchase Agreement R-7 or any related documents, and further execute any agreements, contract, deed or any other document ancillary or related to the Asset Purchase Agreement R-7, which could be required or useful to give full and complete effect thereto;
  - e) complete the sale transaction contemplated under the Asset Purchase Agreement R-7, for and on behalf of the Debtor, and to deliver the Purchase Assets to Purchaser free and clear of any security, charge or other restriction;
  - f) report to this Court once the sale is completed and to prepare the scheme of collocation pursuant to the law, subject to further approval of this Court;
  - g) collect and distribute the proceeds of sale accordingly, subject to further approval of this Court;
8. **APPROVES** and **AUTHORIZES** the sale by the Receiver to Purchaser of the Purchased Assets, pursuant to and in accordance with the terms and conditions of the Asset Purchase Agreement R-7;
9. **DECLARES** that the Asset Purchase Agreement R-7 is valid, opposable and enforceable;
10. **AUTHORIZES** and **ORDERS** the sale of the Purchased Assets on the terms and conditions of the Asset Purchase Agreement R-7 or as the parties may agree to, including the consummation of all transactions contemplated by the Asset Purchase Agreement R-7 and each of its terms and conditions (including the transfer of the Purchased Assets);
11. **ORDERS** and **DECLARES** that upon closing of the transaction set out in the Asset Purchase Agreement R-7, the Purchased Assets shall vest absolutely and exclusively in and with Purchaser, free and clear of and from any and all rights, interests, prior claims, hypothecs, security interests, trusts, deemed trusts (whether contractual, statutory or otherwise), liens, assignments, judgments, executions, writs of seizure and sale, options, adverse claims, levies, charges, liabilities (direct, indirect, absolute or contingent), or other claims or encumbrances, whether or not they have been attached or been perfected), registered or filed and whether secured, unsecured or otherwise, including without limiting the generality of the foregoing, all rights, charges, security

interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of any province in Canada and the *Civil Code of Québec* (all of which are collectively referred to as the "**Encumbrances**") and, for great certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Purchased Assets be expunged, discharged or reduced as against the Purchased Assets as of such final execution, subject to the following paragraph hereof;

12. **ORDERS** that Encumbrances be transferred to and conveyed upon, and thus charge, the proceeds from the sale of the Purchased Assets, subject to all defects, attributes and considerations affecting and/or relating to the Encumbrances in existence prior to the said transfer;
13. **ORDERS** the Registrar of Personal and Movable Real Rights (Province of Québec) (the "**Movable Register**"), upon presentation of the required registration form with a true copy of the order to be rendered on the Motion, to reduce the scope of the Encumbrances but limited to the Purchased Assets, namely to so reduce the scope of the following hypothecs granted in favour of Royal Bank of Canada and registered with the Movable Register under the following numbers: 03-0131017-0011, 03-0131017-0012, 07-0718618-0003, 07-0718618-0006 and 10-0024913-0001;
14. **ORDERS** that notwithstanding:
  - a) these proceedings under the BIA;
  - b) any petitions for a receiving order now or hereafter issued pursuant to the BIA and any received order issued pursuant to any such petitioner; or
  - c) the provisions of any federal or provincial statute;


the vesting of the Purchased Assets in Purchaser, as well as the execution of all agreements pursuant to the order to be granted pursuant to the Motion, shall be binding on any successor in interest, including any trustee, monitor or receiver that may be appointed under any applicable federal or provincial legislation, and shall not be void or voidable nor deemed to be a settlement, transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation;

15. **ORDERS** that the Asset Purchase Agreement R-7 and the report filed with the Motion by the Receiver (in its capacity of Interim Receiver) as Exhibit R-5 be kept confidential and under seal until the earlier of a) the closing of

the transaction set out in the Asset Purchase Agreement R-7; or b) further order of this Court;

16. **DECLARES** that the Receiver shall not be considered to operate or continue the business of the Debtor, for any purposes whatsoever;
17. **DECLARES** that the Receiver, without limiting the generality of the foregoing, shall benefit from the protection of section 14.06 of the BIA;
18. **DECLARES** that the Receiver is not and shall not be deemed or considered to be a successor employer, related employer, sponsor or payer with respect to any of the employees or former employees of the Debtor within the meaning of any provincial, federal or municipal legislation or rules of common law or civil law governing employment or labour standards ("**Employment Legislation**") or any other statute, regulation or rule of law or equity for any purpose whatsoever, or any collective agreement or other contract between the Debtor and any of their current or former employees; that in particular, the Receiver shall not be liable to any of the employees of Debtor for any wages under applicable Employment Legislation, including severance pay, termination pay and vacation pay; and that the Receiver shall not be liable for any contribution or other payment relating to any pension or benefits;
19. **ORDERS** that the Receiver shall not, as a result of the order or anything done in pursuance of the Receiver's duties and powers under the order, be deemed to be in possession of any of the property of the Debtor within the meaning of any federal, provincial or other legislation, statute, regulation or rule of law or equity respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination and regulations;
20. **DECLARES** that the order shall have full force and effect in all of the provinces and territories of Canada and **REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to the order and to assist the Receiver and its agents in carrying out the terms of the present Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to the order or to assist the Receiver and its agents in carrying out the terms of the present Order;
21. **ORDERS** and **DECLARES** that the Receiver (and any and all agents, sub-contractors, employees, consultants, experts, auditors or attorneys whose services are retained by the Receiver), as security for its fees and disbursements, is hereby granted a first ranking charge on the inventory

and accounts receivable of the Debtor, without registration requirement on the public registers;

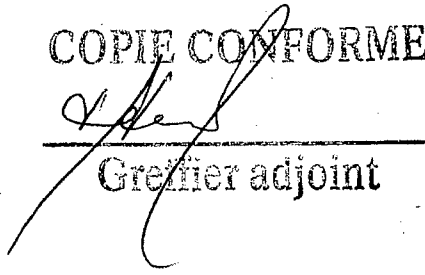
22. **ORDERS** that all proceeds of realization of the assets of the Debtor be distributed according to the order of collocation set out in the BIA;
23. **EXEMPTS** the Receiver to provide a security regarding its appointment as Receiver;
24. **ORDERS** the provisional execution of the present judgment and Order notwithstanding appeal;
25. **THE WHOLE** with <sup>net</sup> costs. 



**ME PIERRE PELLERIN, REGISTRAR**

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