

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-047518-143

DATE: MARCH 20, 2015

PRESIDING:

Me Chantal Plamondon, notary

IN THE MATTER OF THE NOTICE OF INTENTION OF:

NOVEKO INTERNATIONAL INC.

Debtor/Petitioner

-and-

RICHTER ADVISORY GROUP INC.

Trustee

-and-

4001451 CANADA INC.

Respondent

-and-

CUSHMAN & WAKEFIELD LTD.

Respondent

-and-

THE REGISTRAR OF THE REGISTER OF PERSONAL AND MOVABLE REAL RIGHTS

Mis-en-Cause

APPROVAL AND VESTING ORDER

- [1] **ON READING** the Debtor's *Motion for Authorization to Sell Certain Assets of the Debtor, Directions and Other Related Orders* (the "**Motion**"), the affidavit and the

exhibits in support thereof, as well as the Report of Richter Advisory Group Inc. as Trustee dated March 18, 2015;

- [2] **SEEING** the service of the Motion;
- [3] **SEEING** the submissions of Debtor's attorneys;
- [4] **SEEING** that certain offer made by Third Eye Capital Corporation ("**TEC**") on December 5, 2014 and accepted by the Debtor on March 18, 2015 (the "**Offer**");
- [5] **SEEING** that the Offer has been assigned, as provided therein, by TEC to Protair-X Technologies Inc. / Technologies Protair-X Inc. (the "**Purchaser**");
- [6] **SEEING** that the Offer contemplates the purchase of assets of the Debtor and calls for a series of preliminary transactions, all of which are detailed as follows (collectively the "**Transaction**"):
 - (a) one of the Debtor's wholly-owned subsidiaries, Noveko Inc., has formed a newly incorporated wholly-owned subsidiary ("**Noveko DebtCo**"), and Noveko DebtCo will purchase from the Debtor the Debtor's claim receivable (approximately \$59,000,000) owing by Noveko Inc. ("**Noveko Inc. Receivable**") for the sum of \$1.00 evidenced by Noveko DebtCo's Demand Promissory Note ("**Noveko Receivable Note**"). Immediately thereafter, Noveko Inc. and Noveko DebtCo will amalgamate, as a result of which amalgamation, the Noveko Inc. Receivable will be extinguished by operation of law. Thereafter, the Noveko Receivable Note will form part of the assets being purchased by the Purchaser under the Asset Purchase Agreement (the "**APA**"), a draft of which is produced under seal as Exhibit P-6 to the Motion;
 - (b) another of the Debtor's wholly-owned subsidiaries, Noveko Filtration Inc., has formed a newly incorporated wholly-owned subsidiary ("**Filtration DebtCo**"), and Filtration DebtCo will purchase from the Debtor the Debtor's claim receivable (approximately \$4,000,000) owing by Filtration ("**Filtration Receivable**") for the sum of \$1.00 evidenced by Filtration DebtCo's Demand Promissory Note ("**Filtration Receivable Note**"). Immediately thereafter, Filtration and Filtration DebtCo will amalgamate, as a result of which amalgamation, the Filtration Receivable will be extinguished by operation of law. Thereafter, the Filtration Receivable Note will form part of the assets being purchased by the Purchaser under the APA;
 - (c) another of the Debtor's wholly owned subsidiaries, Noveko Trading 2008 KFT ("**NT**"), will sell, assign and transfer to the Debtor all of NT's intellectual property in return for a reduction of indebtedness owing to the Debtor by NT. Thereafter, this intellectual property will be sold by the Debtor to the Proposed Purchaser under the APA; and
 - (d) another of the Debtor's wholly owned subsidiaries, Purer Life Technology Co., Ltd. ("**Purer Life**"), will sell, assign and transfer to Noveko Inc. all of

Purer Life's intellectual property in return for a reduction of indebtedness owing to Noveko Inc. by Purer Life,

the whole in accordance with the terms, conditions and provisions of the APA (Exhibit P-6 under seal) and the series of Sale and Purchase Agreements produced under seal *en liasse* as Exhibit P-7 to the Motion (the APA and such Sale and Purchase Agreements collectively the "**Transaction Documents**");

- [7] **SEEING** that it is appropriate to issue an order authorizing and approving the Transaction and vesting in the Purchaser the assets described in the APA as detailed in **Schedule "A"** annexed to this Order (the "**Purchased Assets**");

WHEREFORE THE COURT:

- [8] **GRANTS** the Motion;

SERVICE

- [9] **ORDERS** that any prior delay for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof;
- [10] **PERMITS** service of this Order at any time and place and by any means whatsoever;

SALE APPROVAL

- [11] **ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Offer by the Vendor is hereby authorized and approved;

EXECUTION OF DOCUMENTATION

- [12] **AUTHORIZES** the Debtor 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 Offer and any other ancillary document which could be required or useful to give full and complete effect thereto, including execution of the Transaction Documents, subject to non-substantial modifications as may be agreed by the Debtor and the Purchaser, and to execute all other agreements, contracts, deeds or any other documents and do all other things necessary in order to give full and complete effect to the Transaction;

AUTHORIZATION

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



- [14] **ORDERS and DECLARES** that upon the issuance of a Trustee's certificate substantially in the form appended as **Schedule "B"** hereto (the "**Certificate**"), the Transaction will be deemed to have occurred and all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Purchaser, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, right of retention, 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, 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 "**Encumbrances**"), including without limiting the generality of the foregoing Encumbrances created by order of this Court and all charges, or security evidenced by registration, publication or filing pursuant to the *Civil Code of Québec* in movable/immovable property, excluding however, the permitted encumbrances and restrictive covenants listed on **Schedule "C"** hereto (the "**Permitted Encumbrances**") and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Purchased Assets, other than the Permitted Encumbrances, be cancelled and discharged as against the Purchased Assets, in each case effective as of the applicable time and date of the Certificate;
- [15] **ORDERS and DECLARES** that upon the issuance of the Certificate, the rights and obligations of the Vendor under that certain Lease (the "**Lease**") by and between the Respondent, 4001451 Canada Inc. (the "**Landlord**"), as landlord, and the Debtor, as tenant, executed by the Landlord on July 13, 2010 and by the Debtor on July 9, 2010, for the premises designated as 149 J.A. Bombardier, sections 1-6, Boucherville, Quebec, is assigned and transferred to the Purchaser;
- [16] **ORDERS** that, in addition to the Debtor, the Purchaser will henceforth be liable to fulfill all of the Debtor's obligations to the Landlord under the Lease;
- [17] **ORDERS** that any anti-assignment and consent-to-assignment provisions in the Lease and any right by the Landlord to cancel the Lease in the event of an assignment shall not apply to the transfer and assignment of the Lease by the Debtor to the Purchaser and shall not restrict, limit, impair, prohibit or otherwise affect the transfer and assignment of the Lease;
- [18] **ORDERS** that all monetary defaults in relation to the Lease occurring, arising or accruing prior to the date of the assignment or transfer to the Purchaser, other than those arising by reason only of the Debtor's insolvency or failure to perform a non-monetary obligation, shall be remedied by the Purchaser within thirty (30) days from the issuance of the Certificate;
- [19] **ORDERS and DECLARES** that upon issuance of the Certificate, the Transaction shall be deemed to constitute and shall have the same effect as sales under

judicial authority as per the provisions of the *Code of Civil Procedure* and a forced sale as per the provisions of the *Civil Code of Quebec*;

- [20] **ORDERS** and **DIRECTS** the Trustee to file with the Court a copy of the Certificate, forthwith after issuance thereof;

CANCELLATION OF SECURITY REGISTRATIONS

- [21] **ORDERS** the Quebec Personal and Movable Real Rights Registrar, upon presentation of the required form with a true copy of this Order and the Certificate, to strike the following registrations in order to allow the transfer to the Purchaser of the Purchased Assets free and clear of such registrations and that, although it may not be all of the Debtor's assets that are being sold to the Purchaser, **ORDERS** that the following registrations be totally and entirely radiated in respect of all of the Debtor's assets and not only in respect of the Purchased Assets:

Deed	Number	Date	Secured Party
Legal Hypothec resulting from a Judgment	13-0928065-0001	2013-10-18	Cushman & Wakefield Ltd.
Conventional Hypothec Without Delivery	12-1050164-0001	2012-12-21	4001451 Canada Inc.

VALIDITY OF THE TRANSACTION

- [22] **ORDERS** that notwithstanding:

- (i) the pendency of these proceedings;
- (ii) any petition for a receiving order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act, Canada* (the "**BIA**") and any order issued pursuant to any such petition; or
- (iii) the provisions of any federal or provincial legislation;

the vesting of the Purchased Assets contemplated in this Order, as well as the execution of the Purchase Agreement pursuant to 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 Vendor, the Purchaser, the Trustee or the Receiver;

GENERAL

- [23] **ORDERS** that the Purchaser shall be authorized to take all steps as may be necessary to effect the discharge of the Encumbrances;
- [24] **ORDERS** that the Purchase Agreement be kept confidential and under seal until the earlier of a) the closing of the Transaction; or b) further order of this Court;
- [25] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada;
- [26] **REQUESTS** the aid and recognition of any court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order;
- [27] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;

THE WHOLE WITHOUT COSTS.

18) Me Chantal Flamand, registraire

Me Gerald F. Kandestin
Me Jeremy Cuttler
KUGLER KANDESTIN LLP
Attorneys for the Debtor/Petitioner

E. Kugler
E. Kugler
E. Kugler, U.S.C.

SCHEDULE "A"

PURCHASED ASSETS

- A.** all cash;
- B.** all shares in the capital stock of the Debtor's subsidiaries;
- C.** all of the Debtor's inventory, wherever located;
- D.** all of the Debtor's machinery, equipment and other tangible movable property;
- E.** all of the Debtor's accounts receivable and claims of every sort or nature, including all tax refunds, tax credits and other amounts owing by fiscal authorities;
- F.** with the exception of certain minor contract rights and obligations, all of the Debtor's goodwill and intangible rights, including without limitation all trademarks and trade names, telephone numbers, logos, signs, marketing materials, permits, licensing rights, rights under franchise agreements, patents, patent applications, intellectual property, orders, bookings, rights under leasing agreements, conditional sales agreements or other contracts, to the extent that the Purchaser may choose to agree in writing to assume future obligations of the Debtor under such leasing agreements and/or conditional sale agreements and/or contracts; and
- G.** all of the Debtor's right, title and interest in and to the Lease.

SCHEDULE "B"
DRAFT CERTIFICATE OF THE TRUSTEE

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Commercial Division)

NO.: 500-11-047518-143
ESTATE NO.: 41-1919185

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

NOVEKO INTERNATIONAL INC.

Debtor/Petitioner

-and-

RICHTER ADVISORY GROUP INC.

Trustee

-and-

4001451 CANADA INC.

Respondent

-and-

CUSHMAN & WAKEFIELD LTD.

Respondent

-and-

**THE REGISTRAR OF THE REGISTER OF
PERSONAL AND MOVABLE REAL
RIGHTS**

Mis-en-Cause

CERTIFICATE OF THE TRUSTEE

RECITALS:

WHEREAS on March 20, 2015, the Court issued an Order (the "**Vesting Order**") thereby, *inter alia*, authorizing and approving the execution by the Debtor of that certain offer (the "**Offer**") made by Third Eye Capital Corporation ("**TEC**") on December 5, 2014

and accepted by the Debtor on March 18, 2015, a copy of which was filed in the Court record.

WHEREAS the Offer was assigned, as provided therein, by TEC to Protair-X Technologies Inc. / Technologies Protair-X Inc. (the "**Purchaser**").

WHEREAS the Offer contemplates the carrying out of a series of preliminary transactions and the Purchase of assets of the Debtor (collectively the "**Transaction**"), the whole in accordance with the terms, conditions and provisions of a series of Sale and Purchase Agreements and an Asset Purchase Agreement (the "**Transaction Documents**").

WHEREAS the Vesting Order contemplates the issuance of this Certificate once: (a) the Transaction has been completed; (b) the Transaction Documents have been executed; (c) the Purchase Prices (as defined in the Transaction Documents) payable upon the closing of the Transaction have been paid in the manner set forth in the Transaction Documents; and (d) all the conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

THE TRUSTEE CERTIFIES THE FOLLOWING:

- (a) the Transaction has been Completed
- (b) the Transaction Documents have been executed;
- (c) the Purchase Prices (as defined in the Transaction Documents) payable upon the closing of the Transaction have been paid in the manner set forth in the Transaction Documents; and
- (d) all conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

This Certificate was issued by the Trustee at Montreal on _____, 2015.

Richter Advisory Group Inc. in its capacity as Trustee,
and not in its personal capacity.

Name: _____

Title: _____

SCHEDULE "C"
PERMITTED ENCUMBRANCES

Deed	Number	Date	Secured Party
Conventional Hypothec Without Delivery	14-0974559-0003	2014-10-17	Third Eye Capital Corporation (acting in its capacity as <i>fondé de pouvoir</i>)
Conventional Hypothec Without Delivery	11-0742496-0004	2011-09-27	Third Eye Capital Corporation (acting in its capacity as Intercreditor Agent and <i>fondé de pouvoir</i> for the Debentureholders)