N/M/26/10

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

IN BANKRUPTCY AND INSOLVENCY

JUDICIAL DISTRICT OF MIRAMICHI

IN THE MATTER OF THE RECEIVERSHIP OF:

ATCON INDUSTRIAL SERVICES INC.

PURSUANT TO Section 33 of the *Judicature Act*, R.S.N.B., 1973, c. J-2, Rule 41, Rules of Court, New Brunswick and Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, C.B-3

COURT OF QUEEN'S BENCH OF N.B.
RECEIVED AND FILED
JUL 28 2010
COUR DU BANC DE LA REINE DU N.-B.
REÇU ET DÉPOSÉ

BETWEEN:

GE CANADA EQUIPMENT FINANCING G.P., GENERAL ELECTRIC CANADA EQUIPMENT FINANCING G.P., GE CANADA LEASING SERVICES COMPANY and GENERAL ELECTRIC REAL ESTATE FINANCE INC., all of which are carrying on business in the Province of New Brunswick,

APPLICANTS

- and -

ATCON INDUSTRIAL SERVICES INC., which is carrying on business in the Province of New Brunswick,

RESPONDENT

- and –

IN THE MATTER OF THE APPLICATION OF PRICEWATERHOUSECOOPERS INC., in its capacity as Court-appointed receiver and manager of the property, assets and undertakings of the Respondent.

<u>APPROVAL AND VESTING ORDER</u>

THIS MOTION, made by PricewaterhouseCoopers Inc. in its capacity as Court-appointed receiver and receiver and manager of the property, assets and undertakings of the Respondent (the "**Atcon Industrial Receiver**") for an order approving the sale transactions (the

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"**Transactions**") contemplated by the purchase and sale agreements (the "**Sale Agreements**") between the Atcon Industrial Receiver as Vendor and the respective Purchasers set out therein, made respectively as of the 25th day of June, 2010 and 1st day of July, 2010 and appended thereto as Schedules "C1" and "C2" and vesting in the respective Purchasers all of the right, title and interest in and to the assets described in the Sale Agreements (the "**Purchased Assets**") was heard this day at 673 King George Highway, Miramichi, New Brunswick.

ON READING the Second Report of the Atcon Industrial Receiver dated the 6th day of July, 2010 (the "**PwC Report**"), the Sixth Report of Ernst & Young Inc. in its capacity as Court-appointed receiver and receiver manager of the property, assets and undertakings of Atcon Construction Inc. (the "**Atcon Construction Receiver**") dated July 23, 2010 and on hearing the submissions of counsel for the Atcon Industrial Receiver, the Atcon Construction Receiver, the Province of New Brunswick, Caterpillar Financial Services Limited, GE Canada Equipment Financing G.P., General Electric Canada Equipment Financing G.P., GE Canada Leasing Services Company, GE VFS Canada Limited Partnership, , M.J. Investments Inc., , no one appearing for any other person on the service list, although properly served as appears from the affidavit of Tera S. Bradford sworn July 26th, 2010 filed herein,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record shall be and is hereby abridged and validated so that the motion is properly returnable today, and that any further service thereof is hereby dispensed with.

2. **THIS COURT ORDERS AND DECLARES** that the Transactions are hereby approved, and the execution of the Sale Agreements by the Atcon Industrial Receiver is hereby authorized and approved, and the Atcon Industrial Receiver, in co-operation with the Atcon Construction Receiver, is hereby authorized and directed to take such additional steps and execute the Sale Agreements and such additional documents as may be necessary or desirable for the completion of the Transactions and for the conveyance of the Purchased Assets to the Purchasers.

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3. **THIS COURT ORDERS** that with effect as of closing, and subject to payment of the purchase price in accordance with the terms of the Sale Agreements, all of the right, title and interest of Atcon Industrial Services Inc. ("**Atcon Industrial**") in and to the Purchased Assets described in the Sale Agreements (the "**Atcon Industrial Purchased Assets**") shall vest absolutely in the Purchasers as registered owners without further instrument of transfer or discharge, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the order of The Honourable Mr. Justice Riordon granted in these proceedings dated March 30, 2010; (ii) any encumbrances or charges created by any court orders granted in the *Companies' Creditors Arrangement Act* (Canada) proceedings of Atcon Industrial having Court File No. N/M/16/10 (the "**CCAA Proceedings**") (iii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (New Brunswick), the *Land Titles Act* (New Brunswick), or any other registry system (all of which are collectively referred to as the "**Encumbrances**") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Atcon Industrial Purchased Assets are hereby expunged and discharged as against the Atcon Industrial Purchased Assets.

4. **THIS COURT ORDERS** that notwithstanding this court order, easements and rights of way and such other interests including prospective interests shall continue with respect to the Atcon Industrial Real Property (as defined herein).

5. **THIS COURT ORDERS** that upon the registration under the *Land Titles Act* (New Brunswick) of a transfer for the Atcon Industrial Real Property by the Atcon Industrial Receiver, the Land Registrar is hereby directed to enter the Purchaser as the owner of the real property municipally known as 67 General Manson Way and Schlumberger Road (PIDs 40493868 and 40497307, PAN 05889630) (the "**Atcon Industrial Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Atcon Industrial Real Property all of the Claims listed in Schedule A hereto.

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6. **THIS COURT ORDERS** that all right, title and interest in the Canadian Institute of Steel Construction Certificate of Membership dated November 16, 2007 for Atcon Industrial Services Inc – Fabrication Division, the Canadian Welding Bureau's Letter of Validation for Atcon Industrial Services (Fabrication Division) and the Certificate of Registration, Certificate Number Q5205C of Quasar held by Atcon Industrial Services be transferred to the Purchaser, without reservation, condition, restriction or stipulation, and be a part of the Purchased Assets and such certificates, letters and registrations shall be in full force and effect as they were when in Atcon Industrial Services, subject to the right of the Canadian Institute of Steel Construction, the Canadian Welding Bureau and/or Quasar to bring the matter before the court and be heard. The Court grants this order on the undertaking of the Solicitor for M.J. Investments Inc. to serve the Order on the Canadian Institute of Steel Construction, the Canadian Welding Bureau and Quasar and provide proof of service within 15 days.

7. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Atcon Industrial Purchased Assets shall stand in the place and stead of the Atcon Industrial Purchased Assets, and that from and after the Closing all Claims and Encumbrances shall attach to the net proceeds from the sale of the Atcon Industrial Purchased Assets with the same priority as they had with respect to the Atcon Industrial Purchased Assets, as if the Atcon Industrial Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

8. **THIS COURT ORDERS** that the Atcon Industrial Receiver is authorized to execute, in the name of Atcon Industrial, all such documents of transfer, bills of sale, assignments and other documents and instruments as may be required or desirable to carry out the sale of the Atcon Industrial Purchased Assets or any part of them by the Atcon Industrial Receiver or evidence the sale, transfer and assignment of the Atcon Industrial Purchased Assets or any part of them and the vesting of title, as ordered above, including without limitation of any documents which may be required or that the Purchaser deems desirable to be registered at any registry office where registration may be required or desirable to record, evidence or carry out the transfer of the Atcon Industrial Purchased Assets or any of them and any documents as may otherwise be required to carry out the purpose and intent of the Sale Agreement and of this order.

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9. **THIS COURT ORDERS** that the Atcon Industrial Receiver, with the consent of the Atcon Construction Receiver, and the Purchasers are at liberty to amend the Closing Date by agreement between them without the need for any further Order of the Court.

10. **THIS COURT ORDERS** that, notwithstanding:

(a) the pendency of these proceedings;

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of Atcon Industrial and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of the Atcon Industrial;

the vesting of the Atcon Industrial Purchased Assets in the Purchasers pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of Atcon Industrial and shall not be void or voidable by creditors of Atcon Industrial, nor shall it constitute nor be deemed to be a transaction at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) 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.

11. **THIS COURT ORDERS** that the Atcon Industrial Receiver is authorized and directed to effect a distribution of monies from the estate of Atcon Industrial, in the amount of $73,500.00, to GE Canada Equipment Financing G.P. ("**GE**") in respect of the monies owing to and provided by GE as working capital for the initial advance for the Atcon Industrial Receiver to pay operating expenses at the outset of the Atcon Industrial receivership proceeding (the "**GE Distribution**").

12. **THIS COURT ORDERS** that the Atcon Industrial Receiver is authorized and directed to effect a distribution of monies from the estate of Atcon Industrial, in the amount of $623.75,

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and from the proceeds of the sale of the real property of Atcon Construction Inc., in the amount of $72,726.91, or such amounts as outstanding taxes on the closing of the sale of the Atcon Industrial Purchased Assets and the sale of the real property of Atcon Construction Inc. located at 67 General Manson Way, to the Minister of Finance, Province of New Brunswick ("Minister") in respect of the monies owing to the Minister for outstanding real property taxes on the Atcon Industrial Purchased Assets (the "**Minister Distribution**").

13. **THIS COURT ORDERS** that the Atcon Industrial Receiver is authorized and directed to effect a distribution of monies from the estate of Atcon Industrial, in the amount of $405,000.00, to Royal Bank Leasing as payment for assets released to it by Atcon Industrial and Ernst & Young Inc. in its capacity as Court-appointed monitor of Atcon Industrial in the CCAA proceedings (the "**Monitor**") in March, 2010 and forming part of the Atcon Industrial Purchased Assets (the "**RBL Distribution**").

14. **THIS COURT ORDERS** that the Atcon Industrial Receiver is authorized and directed to effect a distribution of monies from the estate of Atcon Industrial, in the amount of $150,000.00, to National City Leasing ("**NCL**") as payment for cranes and beams related to Building D and the related contracts which are being assigned en bloc, being assets released to NCL by Atcon Industrial and the Monitor (the "**NCL Distribution**").

15. **THIS COURT ORDERS** that the Atcon Industrial Receiver is authorized and directed to effect a distribution of monies from the estate of Atcon Industrial, in the amount of $20,000.00, to the Province of New Brunswick ("**PNB**") as payment for the release of its mortgage on the back lands at 67 General Manson Way, which lands were owned by Atcon Industrial and form part of the Atcon Industrial Purchased Assets (the "**PNB Distribution**").

16. **THIS COURT ORDERS AND DECLARES** that the GE Distribution, the Minister Distribution, the RBL Distribution, the NCL Distribution and the PNB Distribution (collectively referred to as the "**Asset Sale Distributions**") are valid and binding notwithstanding the pendency of these proceedings, and these Asset Sale Distributions shall not be void or voidable at the instance of creditors and claimants and do not constitute nor shall they be deemed to be transactions at undervalue, settlements, fraudulent preferences, assignments, fraudulent

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conveyances, oppressive conduct or other reviewable transactions under the *Bankruptcy and Insolvency Act* (Canada), or any other applicable federal or provincial legislation.

17. **THIS COURT ORDERS** that the Appraisal Report dated April 28, 2010 and the Short Narrative Appraisal Report dated April 14, 2010, both delivered to the Court on July 15, 2010 shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope and shall only be opened upon further Order of the Court.

Dated at Miramichi, New Brunswick, this **28th** day of **July, 2010.**

Thomas W. Riordon
Judge of the Court of Queen's Bench of
New Brunswick