Court File No. N/M/17/10

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 GROUP INC., ATCON HOLDINGS INC., ATCON PROPERTY HOLDINGS INC., ATCON VENEER PRODUCTS INC., ATCON LOGISTICS INC., ATCON CONSTRUCTION INC., ATCON MANAGEMENT SERVICES INC., ATCON CIVIL LTD., DYCON CONSTRUCTION LTD., ATCON STRUCTURES INC. AND ENVIREM TECHNOLOGIES INC.

PURSUANT TO Section 33 of the *Judicature Act,* R.S.N.B. 1973, Ch. 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

BETWEEN:

THE BANK OF NOVA SCOTIA, a Canadian chartered bank with a registered office in the City of Saint John, Province of New Brunswick

APPLICANT

- and –

COURT OF QUEEN'S BENCH OF N.B. RECEIVED AND FILED
JUN 29 2015
COUR DU BANC DE LA REINE DU N.-B. REÇU ET DÉPOSÉ

ATCON GROUP INC., ATCON HOLDINGS INC., ATCON PROPERTY HOLDINGS INC., ATCON VENEER PRODUCTS INC., ATCON LOGISTICS INC., ATCON CONSTRUCTION INC., ATCON MANAGEMENT SERVICES INC., ATCON CIVIL LTD., DYCON CONSTRUCTION LTD., ATCON STRUCTURES INC. AND ENVIREM TECHNOLOGIES INC., all of which are carrying on business in the Province of New Brunswick

RESPONDENTS

APPROVAL AND VESTING ORDER

THIS MOTION, made by **Ernst & Young Inc.**, in its capacity as the Court-appointed receiver and receiver manager (the "**Receiver**") of the undertaking, property and assets of **Atcon Construction Inc.** (the "**Debtor**") for an order approving, among other things, the sale transaction (the "**Transaction**") contemplated by a share purchase agreement (the "**Sale**

29 June 2015

Agreement") between the Receiver and SNC-Lavalin Inc. (the "**Purchaser**") dated 3 June 2015 and appended to the Twenty-Ninth Report of the Receiver dated 4 June 2015 (the "**Twenty-Ninth Report**"), and vesting in the Purchaser the Debtor's right, title and interest in and to the shares described in the Sale Agreement (the "**ACI Shares**"), was heard by conference call this day at 673 King George Highway, Miramichi, New Brunswick.

ON READING the Receiver's Notice of Motion dated 8 June 2015, the Twenty-Ninth Report, and on hearing the submissions of counsel for the Receiver, counsel for the Purchaser and such other counsel in attendance, and on reading the affidavit of service of Kyle B. Plunkett sworn 11 June 2015, and the affidavit of service of Marie Pacheco sworn on 11 June 2015, and on being advised by the Receiver of the consent of each of The Bank of Nova Scotia (the "**Bank**"), the Province of New Brunswick (the "**Province**"), Aviva Insurance Company of Canada and its affiliated entities (collectively, "**Aviva**") and GE Canada Equipment Financing G.P. and its affiliated entities (collectively, "**G.E.**", and collectively with the Bank, the Province and Aviva, the "**Secured Creditors**") to this Order.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Receiver's Notice of Motion, the Twenty-Ninth Report and the Record on Motion 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.

APPROVAL OF TRANSACTION

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the ACI Shares to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the ACI Shares

29 June 2015

shall vest absolutely in the Purchaser, 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 Order of The Honourable Mr. Justice Riordon granted in these proceedings; and (ii) all charges, security interests or claims whether or not evidenced by registrations pursuant to the *Personal Property Security 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 ACI Shares are hereby expunged and discharged as against the ACI Shares.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the ACI Shares shall stand in the place and stead of the ACI Shares, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the ACI Shares with the same priority as they had with respect to the ACI Shares immediately prior to the sale, as if the ACI Shares had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. **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 the Debtor and any bankruptcy order issued pursuant to any such applications; and

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

29 June 2015

the vesting of the ACI Shares in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, 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.

RECEIVER'S ACTIVITIES

7. **THIS COURT ORDERS** that the conduct, action and activities of the Receiver in administering this receivership proceeding as set out in the Twenty-Ninth Report, be and are hereby approved.

DISTRIBUTION OF THE BRUN-WAY PROCEEDS

8. **THIS COURT ORDERS** that the Receiver is authorized and empowered to utilize the Brun-Way Proceeds (as defined in the Twenty-Ninth Report) for the purpose of making payments required or permitted by the Receivership Order (as defined in the Twenty-Ninth Report).

9. **THIS COURT ORDERS** that the Receiver is authorized, empowered and directed to pay the Brun-Way Proceeds as follows:

(a) the sum of $6,800,000.00 to the Bank;

(b) the sum of $2,724,415.58 to the Province;

(c) the sum of $39,806.64 to G.E.; and

(d) the sum of $16,654.21 to Aviva.

Dated at Miramichi, New Brunswick, this 29th day of June, 2015.

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

Schedule A – Form of Receiver's Certificate

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BETWEEN:

THE BANK OF NOVA SCOTIA, a Canadian chartered bank with a registered office in the City of Saint John, Province of New Brunswick

APPLICANT

- and –

ATCON GROUP INC., ATCON HOLDINGS INC., ATCON PROPERTY HOLDINGS INC., ATCON VENEER PRODUCTS INC., ATCON LOGISTICS INC., ATCON CONSTRUCTION INC., ATCON MANAGEMENT SERVICES INC., ATCON CIVIL LTD., DYCON CONSTRUCTION LTD., ATCON STRUCTURES INC. AND ENVIREM TECHNOLOGIES INC., all of which are carrying on business in the Province of New Brunswick

RESPONDENTS

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Riordon of The Court of Queen's Bench of New Brunswick (the "**Court**") dated 30 March 2010, Ernst & Young Inc. was appointed as the receiver and receiver manager (the "**Receiver**") of the undertaking, property and assets of Atcon Construction Inc. (the "**Debtor**").

24 June 2015

B. Pursuant to an Order of the Court dated 29 June 2015, the Court approved the share purchase agreement made as of 3 June 2015 (the "**Sale Agreement**") between the Receiver and SNC-Lavalin Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the ACI Shares, which vesting is to be effective with respect to the ACI Shares upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the ACI Shares; (ii) that the conditions to Closing as set out in Articles 9, 10 and 11 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the ACI Shares payable on the Closing Date pursuant to the Sale Agreement;

2. The conditions to Closing as set out in Articles 9, 10 and 11 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and

3. The Transaction has been completed to the satisfaction of the Receiver.

4. This Certificate was delivered by the Receiver at ________ [TIME] on _______ June 2015.

ERNST & YOUNG INC., in its capacity as receiver and receiver manager of the undertaking, property and assets of **ATCON CONSTRUCTION INC.**, and not in its personal capacity

Per: ______________________________

Name:

Title:

Sesk
29 June 2015