

- 1 NOV. 2024

Mylene Helou
Personne désignée par le greffier

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-064800-242

S U P E R I O R C O U R T

(Commercial Division)

(Sitting as a court designated pursuant to the
Bankruptcy and Insolvency Act, 1985, c. B-3)

Montréal, November 1, 2024

Me Patrick Gosselin, Registrar

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

EARTH ALIVE CLEAN TECHNOLOGIES INC.

Debtor / Applicant

-and-

RAYMOND CHABOT INC.

Trustee

-and-

NIKOLAOS SOFRONIS

-and-

VLADIMIR CARDON DE LICHTBUER

Secured Creditors

**ORDER (I) APPROVING AN INTERIM FINANCING AND AN INTERIM FINANCING
CHARGE, (II) APPROVING AN ADMINISTRATION CHARGE, (III) APPROVING A
D&O CHARGE, (IV) EXTENDING THE TIME TO FILE A PROPOSAL AND (V)
APPROVING ANCILLARY RELIEF**

ON READING the *Application for the Issuance of an Order (i) Approving an Interim Financing and an Interim Financing Charge, (ii) Approving an Administration Charge, (iii) Approving a D&O Charge, (iv) Extending the Time to File a Proposal and (v) Approving Ancillary Relief* (the "**Application**") filed by Earth Alive Clean Technologies Inc. ("**Earth Alive**" or the "**Debtor**"), the affidavit and the exhibits filed in support of the Application, as well as the Amended Report of

Raymond Chabot Inc. (the "**Trustee**"), in its capacity as Trustee, and relying upon the submissions of counsel and being advised that the interested parties, including secured creditors who are likely to be affected by the charges created herein were given prior notice of the presentation of the Application;

GIVEN the provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**");

THE COURT:

1. **GRANTS** the Application.

SERVICE

2. **DECLARES** that sufficient prior notice of the presentation of the Application has been given to interested parties, including the secured creditors who are likely to be affected by the charges created herein.

INTERIM FINANCING AND INTERIM FINANCING CHARGE

3. **ORDERS** that the Debtor be and is hereby authorized to borrow and repay from Nikolaos Sofronis, Menezes SRL, Jean-Pierre Ferorelli, Bill Vanderfelt, Christian Dumolin, Greg Nolet, Jérôme Lecoq and PHAGEC, société familiale civile belge (each, an "**Interim Lender**" and collectively, the "**Interim Lenders**"), such amounts from time to time as it may consider necessary or desirable, up to a maximum principal amount of CAD\$1,720,000 outstanding at any time, on the terms and conditions as set forth in the Interim Financing Term Sheet filed in support of the Application as **Exhibit R-7** (the "**Interim Financing Term Sheet**"), to fund the ongoing expenditures of the Debtor and to pay such other amounts as are permitted by the terms of the Interim Financing Term Sheet and this Order (the "**Interim Facility**").
4. **ORDERS** that Debtor is hereby authorized to execute and deliver such credit agreements, security documents and other definitive documents (collectively the "**Interim Financing Documents**") as may be required by the Interim Lenders in connection with the Interim Facility and the Interim Financing Term Sheet, and the Debtor is hereby authorized to perform all of its obligations under the Interim Financing Documents.

5. **ORDERS** that the Debtor shall pay to the Interim Lenders, when due, all amounts owing under the Interim Financing Documents and shall perform all of its other obligations to the Interim Lenders pursuant to the Interim Financing Term Sheet, the Interim Financing Documents and this Order.
6. **DECLARES** that all of the Debtor's present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (collectively the "**Property**"), is hereby subject to a charge, hypothec and security for an aggregate amount of CAD\$2,200,000 (the "**Interim Financing Charge**") in favour of the Interim Lenders as security for all obligations of the Debtor to the Interim Lenders with respect to all amounts owing under or in connection with the Interim Financing Term Sheet and the Interim Financing Documents. The Interim Financing Charge shall subsist without necessity of any publication, registration, recording, filing or perfection, and shall have the priority established by paragraphs [15] and [16] of this Order.
7. **ORDERS** that the claims of the Interim Lenders pursuant to the Interim Financing Documents shall not be compromised or arranged pursuant to any plan, arrangement or otherwise in these proceedings and the Interim Lenders, in such capacity, shall be treated as an unaffected creditor in these proceedings.
8. **ORDERS** that the Interim Lenders may:
 - (a) notwithstanding any other provision of the Order, take such steps from time to time as they may deem necessary or appropriate to register, record or perfect the Interim Financing Charge and the Interim Financing Documents in all jurisdictions where they deems it is appropriate; and
 - (b) notwithstanding the terms of the paragraph to follow, refuse to make any advance if the Debtor fails to meet the provisions of the Interim Financing Term Sheet and the Interim Financing Documents.
9. **ORDERS** that the Interim Lenders shall not take any enforcement steps under the Interim Financing Documents or the Interim Financing Charge without providing at least ten (10) business days written notice (the "**Notice Period**") of a default thereunder to the Debtor, its legal counsel and the Trustee, and to creditors whose rights are

registered or published at the appropriate registers or requesting a copy of such notice. Upon expiry of such Notice Period, the Interim Lenders shall be entitled to take any and all steps under the Interim Financing Documents and the Interim Financing Charge and otherwise permitted at law.

DIRECTORS AND OFFICERS' INDEMNIFICATION AND CHARGE

10. **ORDERS** that Earth Alive shall indemnify its directors and officers (the "**D&Os**") from all claims relating to any obligations or liabilities they may incur and which have accrued by reason of or in relation to their respective capacities as directors or officers of Earth Alive after as of 12:01 AM Montreal time, on the date of this Order (the "**Effective Time**"), except where such obligations or liabilities were incurred as a result of such directors' or officers' gross negligence, wilful misconduct or gross or intentional fault as further detailed and provided for under Section 64.1 of the BIA.
11. **ORDERS** that the D&Os shall be entitled to the benefit of, and are hereby granted, a charge and security in the Property to the extent of the aggregate amount of CAD\$100,000 (the "**D&O Charge**"), as security for the indemnity provided in paragraph [10] of this Order as it relates to obligations and liabilities that the D&Os may incur in such capacity after the Effective Time. The D&O Charge shall have the priority set out in paragraphs [15] and [16] of the Order.
12. **ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge, and (b) the D&Os shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts for which the D&Os are entitled to be indemnified in accordance with paragraph [10] of this Order.

ADMINISTRATION CHARGE

13. **ORDERS** that the Debtor shall pay the reasonable fees and disbursements of the Trustee, the Trustee's legal counsel (if any) and the Debtor's legal counsel, directly related to these proceedings, whether incurred before or after this Order.

14. **ORDERS** that the Trustee, the Trustee's legal counsel (if any) and Earth Alive's legal counsel, as security for the professional fees and disbursements incurred in connection with these proceedings under the BIA, both before and after the issuance of this Order or any other proceedings in the present matter, shall be entitled to the benefit of and are hereby granted a charge and security in the Property to the extent of the aggregate amount of CAD\$250,000 (the "**Administration Charge**"), having the priority set out in paragraphs [15] and [16] of the Order.

PRIORITIES AND GENERAL PROVISIONS RELATING TO THE CHARGES

15. **DECLARES** that the priorities of the Administration Charge, Interim Financing Charge, and D&O Charge (collectively, the "**NOI Charges**"), as between them with respect to any Property to which they apply, shall be as follows:
- (a) first, the Administration Charge;
 - (b) second, the Interim Financing Charge; and
 - (c) third, D&O Charge.
16. **DECLARES** that each of the NOI Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind, including claims of His Majesty in right of Canada and His Majesty in right of a Province subject to a deemed trust (collectively, the "**Encumbrances**") affecting the Property charged by such Encumbrances.
17. **ORDERS** that, except as otherwise expressly provided for herein, Earth Alive shall not grant any Encumbrances in or against any Property that rank in priority to, or *pari passu* with, any of the NOI Charges unless Earth Alive obtains the prior approval of the Court.
18. **DECLARES** that each of the NOI Charges shall attach, as of the Effective Time, to all present and future Property of Earth Alive, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.
19. **DECLARES** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiving order filed pursuant to the BIA in respect of Earth Alive and any receiving order allowing such petition or any assignment

in bankruptcy made or deemed to be made in respect of Earth Alive, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by Earth Alive pursuant to the Order and the granting of the NOI Charges do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.

SALE AND INVESTMENT SOLICITATION PROCESS

20. **AUTHORIZES** the Debtor, in consultation with the Trustee, to conduct and implement a *Sale and Investment Solicitation Process* with respect to the assets and business of the Debtor (the “SISP”) in accordance with the following key terms and conditions (the “Key Terms and Conditions”):

Summary of Certain Key Terms of the SISP	
Timeline	<ul style="list-style-type: none">• Formal launch of the SISP: November 1, 2024• Due diligence period: November 1, 2024 – December 20, 2024• Binding offers deadline: December 20, 2024• Negotiations with tenderers and preparation of Court materials for the approval of an offer: December 22, 2024 – January 15, 2025• Signing of binding asset or share purchase agreement: January 15, 2025• Service of an application for Court approval of the transaction contemplated under the asset or share purchase agreement: January 16, 2025• Hearing for Court approval (subject to Court availability): January 20, 2025• Closing of the transaction: No later than January 27, 2025
Requirements for Qualified Bid	<ul style="list-style-type: none">• Deposit of at least ten (10%) percent of the total cash purchase price payable under the offer.• Must include an Outside Date of January 31, 2025 or sooner.

	<ul style="list-style-type: none">• Must identify the bidder and any principals and the representatives of the bidder who are authorized to appear and act on their behalf for all purposes regarding the transactions contemplated.• Must include a list of any consents required in order for the bidder to complete the transactions contemplated.• Evidence upon which the Trustee may reasonably conclude that the bidder has the necessary financial ability to close the contemplated transaction and perform future performance of all obligations to be assumed.• Acknowledgement that the bidder has relied solely on its independent review and investigation and that it has not relying on any representation by the Trustee.• Must be on an "as is, where is" basis.• No condition or contingency relating to due diligence or financing or any other material conditions precedent to the offeror's obligation to complete the transaction.
Credit Bid Permitted	<ul style="list-style-type: none">• A secured creditor of Earth Alive, including any Interim Lender, may participate as a bidder in the SISP, or commit to Bid its secured debt, including a credit bid of some or all of its outstanding indebtedness under any loan facility (inclusive of interest and other amounts payable under any loan agreement) owing to such party in the SISP.
Bid by directors or officers	<ul style="list-style-type: none">• To the extent any of the Debtor's directors and officers, or any person related thereto, intends to act as a prospective bidder, such person shall notify the Trustee, the Debtor and its counsel, in writing, no later than ten (10) days before the bidding offer deadline of December 21, 2024, failing which it shall not be permitted to participate in the SISP. Upon receipt of such notice, the director(s) and/or officer(s) concerned, and any person related thereto, shall no longer be entitled to receive any documentation or information regarding the conduct of the SISP.
Extension of the Outside Date	<ul style="list-style-type: none">• Extension of the Outside Date may be required where customary regulatory approval required is pending.
Court Approval	<ul style="list-style-type: none">• As soon as practicable after determination of the winning bid, the Debtor will bring an application to the Court

21. **AUTHORIZES** the Debtor, with the consent of the Trustee, to amend, modify, vary or supplement the Key Term and Conditions without the need for obtaining an order of the Court, provided that they determine that such amendment, modification, variation or supplement and useful in order to give effect to the substance of the SISP.
22. **AUTHORIZES** the Debtor and the Trustee to take such steps and execute such documentation as may be necessary or incidental to the implementation of the SISP and **ORDERS** that nothing in the Order shall be interpreted as restraining the powers of the Trustee under the BIA.
23. **ORDERS** that, the Debtor and the Trustee, subject to this Order, are authorized and permitted under applicable law to disclose and transfer to potential bidders and to their advisors, personal information in the custody or control of the Debtor relating to the operation of the business being the object of the SISP, including human resources and payroll information, records pertaining to the Applicants' past and current employees, and information about any consumer, website visitor or other individual (collectively, "**Personal Information**"), to the extent necessary to negotiate, determine whether to proceed with, and attempt to complete a transaction in accordance with the SISP (a "**Transaction**"). Each potential bidder to whom any Personal Information is disclosed shall maintain and protect the Personal Information with security safeguards appropriate to the sensitivity of the Personal Information and as may otherwise be required by applicable federal or provincial privacy legislation and limit the use of such information to its evaluation of a Transaction, and if it does not complete a Transaction with the Debtor, shall return all such information to the Debtor, or in the alternative permanently destroy all such information.
24. **ORDERS** that the Debtor and the Trustee, and each of their respective affiliates, partners, directors, employees, agents, controlling persons, lenders, legal counsel and advisers shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of the conduct of the SISP or the performance of their duties under the SISP, except to the extent of such losses, claims, damages or liabilities resulting from gross negligence or willful misconduct of any such person or entity, as applicable, as determined by this Court.

EXTENSION OF THE TIME TO FILE A PROPOSAL

25. **DECLARES** that the time period within which the Debtor may file a proposal under the BIA is hereby extended to December 16, 2024.

GENERAL

26. **DECLARES** that, except as otherwise specified herein, the Debtor and the Trustee are at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to any person or other appropriate parties at their respective given addresses as last shown on the records of the Debtor and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three business days after mailing if by ordinary mail.
27. **DECLARES** that the Debtor and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that the Debtor shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter.
28. **DECLARES** that, unless otherwise provided herein, under the BIA, or ordered by this Court, no document, order or other material need be served on any person in respect of these proceedings, unless such person has served a Notice of Appearance on the Debtor's legal counsel and the Trustee and has filed such notice with this Court, or appears on the service list prepared by the Trustee or the Debtor's legal counsel, save and except when an order is sought against a person not previously involved in these proceedings.
29. **DECLARES** that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
30. **REQUEST** 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 elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of this Order.

31. **ORDERS** the provisional execution of the Order notwithstanding any appeal.

THE WHOLE WITHOUT COST.



Me Patrick Gosselin, Registrar