

**SUPERIOR COURT  
(Commercial Division)**

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MINGAN

N°: 650-11-001027-217  
DATE : May 19, 2021

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**PRESIDING: The Honourable Daniel Dumais, J.S.C.**

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**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED:**

**BIOÉNERGIE AE CÔTE-NORD CANADA INC.**

Debtor/Petitioner

- and -

**BIOGAZ SP s.e.n.c.**

Petitioner

- and -

**ENVERGENT TECHNOLOGIES LLC**

- and -

**UOP LLC**

Respondents

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**ORDER REGARDING THE SPECIFIC PERFORMANCE OF CERTAIN  
CONTRACTUAL OBLIGATIONS BY ENVERGENT TECHNOLOGIES  
LLC**

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**ON READING** the Debtor's *Requête de la Débitrice pour une ordonnance d'exécution en nature contre les intimées Envergent Technologies LLC et UOP LLC*, the exhibits and the affidavit filed in support thereof (the "**Application**");

**ON HEARING** the representations of counsel;

**GIVEN** the First Initial Order issued on May 5, 2021, and the Amended and Restated Initial Order issued on May 19, 2021 (the **"Initial Order"**);

**GIVEN** the provisions of the CCAA;

**GIVEN** that the Debtor and Envergent Technologies LLC (**"Envergent"**) have signed a an Amended and Restated Supply Agreement dated March 31, 2016 and the Guarantee Agreement dated March 31, 2016 (collectively the **"Agreements"**);

**GIVEN** that Envergent is an equity joint venture owned by Ensyn Corporation and UOP LLC (**"UOP"**).

**GIVEN** that UOP has provided the Debtor with a Performance Guarantee in accordance with Exhibit 2 to Annex C of the Amended and Restated Supply Agreement dated March 31, 2016 (the **"Performance Guarantee"**);

**GIVEN** that the Debtor contends that Envergent and UOP should be ordered to perform the work described in the document entitled "AECN Work Plan" dated May 9, 2021 (the **"Work Plan"**), including all work that is not within Envergent's work scope but is caused by design, fabrication or workmanship defects of the Units, and all work required to meet the performance specifications set out at article 1.2 of Attachment II of the Guarantee Agreement (the **"Total Work"**);

**GIVEN** that Envergent and UOP contend that Envergent should only be ordered to do the work described in the document entitled "AECN Work Plan" dated May 9, 2021 (the **"Work Plan"**) that was filed in support of the Application as Exhibit P-18 to the extent that it is within its work scope according to the Agreements (the **"Work"**);

**GIVEN** that Envergent only consents to perform the Work, the whole on the schedule as amended by the Revised Schedule communicated as Exhibit DB-3 the sworn statement of Donald H. Bell dated May 17, 2021;

**GIVEN** that Envergent consents to bear the expense of preparing the design and purchasing and delivering any equipment which is required for the Work, including the expense of its personnel and consents to bear the costs that it has authorized in advance of a third party contractor (the **"Third Party Contractor"**) to install the new equipment provided for in the Work Plan (the **"Installation Costs"**), the whole without admission of liability, and under reserve of its right to claim half of the Installation Costs from the Debtor;

**GIVEN** that UOP acknowledges Envergent's consent to the present Order, agrees that its obligations pursuant to the Performance Guarantee or under the law are not affected by Envergent's consent to the present order and undertakes not to invoke Envergent's consent to the present Order to assert that its obligations would be void or otherwise modified;

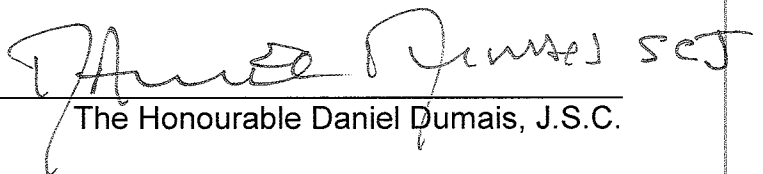
**GIVEN** that Envergent states that it cannot issue purchase orders for certain items that form necessary part of the Work Plan without receiving certain information from the Debtor (the "**Debtor Information**");

**WHEREFORE, THE COURT:**

- [1] **GRANTS** the Application in part;
- [2] **ORDERS** that a technical meeting between the representatives of Envergent, the Debtor and the Monitor, in the presence of their respective legal counsel, take place by no later than May 21, 2021, to discuss the Debtor Information (the "**Technical Meeting**");
- [3] **ORDERS** than within 10 business days from Technical Meeting, Envergent shall provide the Debtor with a list of Debtor Information that Envergent reasonably requests for the performance of the Work;
- [4] **ORDERS** than within 5 business days from the communication by Envergent of the list of the requested Debtor Information, the Debtor shall provide such Debtor Information;
- [5] **ORDERS** Envergent to perform the Work and to use all reasonable efforts to complete the Work on the two Units, as defined in the Agreements, within twenty-three (23) weeks of the Debtor communicating the Debtor Information, the whole under the supervision of the Debtor, as assisted by the Monitor, or any other person it shall designate;
- [6] **ORDERS** Envergent to pay for the expense of preparing the design and purchasing and delivering all equipment that is required for the Work, including the expense of its personnel;
- [7] **ORDERS** that Envergent shall keep a separate accounting of the Installation Costs to be made available to the Monitor from time to time;
- [8] **ORDERS** Envergent to pay the Installation Costs, under reservation of its right to claim half of the Installation Costs from the Debtor and the right of the Debtor to dispute such claim;
- [9] **AUTHORIZES** Envergent to file an application with this Court for a determination of whether Envergent is entitled to be indemnified by the Debtor for half of the Installation Costs and any equipment installed pursuant to the present order (the "**Envergent Claim**");
- [10] **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, is hereby subject to a charge and security for an aggregate amount of CDN\$360,000 (such charge and security is

referred to herein as the “**Envergent Charge**”) in favour of Envergent as security for the Envergent Claim;

- [11] **RESERVES** Envergent’s right to seek an increase in the amount of the Envergent Charge once it obtains an estimate of the Installation Costs and the Debtor and any other interested party’s right to contest such demand;
- [12] **DECLARES** that the Envergent Charge shall rank immediately after the “Charge du Prêteur temporaire” and the “Charge d’administration” created pursuant to the Initial Order;
- [13] **DECLARES** that the Envergent Charge shall constitute a “*Charge en vertu de la LACC*” within the meaning of the Initial Order;
- [14] **RESERVES** the jurisdiction of this Court on the right of the parties to seek a modification to the present order in light of new information or events that arise in the execution of the Work Plan that impact the delay for the completion of the Work;
- [15] **RESERVES** the jurisdiction of this Court on the right of the Debtor to seek an order that the Total Work be performed by Envergent and UOP at their expense and/or any of the orders sought at conclusions B, C, D, E, F, G, H, I and J of the Application, and the right of Envergent and UOP to dispute such demands;
- [16] **RESERVES** the jurisdiction of this Court on the right of the parties to apply to this Court for directions or the variation of the present order in the event than an issue arises in the execution of the present Order;
- [17] **ORDERS** Envergent to communicate to the Debtor the construction specifications, plans and drawings that Envergent communicates to the Third Party Contractor relating to the implementation of the Work when such are communicated to the Third Party Contractor under the condition that the Debtor has executed a non-disclosure agreement in a form and substance satisfactory to Envergent or this Court has issued a confidentiality order in respect of such documents;
- [18] **ORDERS** that Exhibits P-14 and P-18 in support of the Application be kept confidential and under seal until further order of this Court;
- [19] **THE WHOLE** with costs to follow.

  
The Honourable Daniel Dumais, J.S.C.