

BRITISH COLUMBIA SECURITIES COMMISSION

Securities Act, RSBC 1996, c. 418

Citation: Re Imex Systems Inc., 2018 BCSECCOM 351

Date: 20181102

**Damodar Arapakota, The Arapakota 2006 Family Trust,
Imex Systems Inc. and TSX Venture Exchange Inc.**

Panel

Nigel P. Cave
Judith Downes
George C. Glover, Jr.

Vice Chair
Commissioner
Commissioner

Application date

July 25, 2018

Submissions completed

October 19, 2018

Decision date

November 2, 2018

Appearances

Alistair Crawley
Michael Byers

For Damodar Arapakota and The Arapakota 2006 Family Trust

Milton Davis
Samantha Green

For Imex Systems Inc.

Linda Plumpton
James Gotowiec

For the TSX Venture Exchange

Jennifer Whately
Gordon Smith

For the Executive Director

Decision

- [1] On July 25, 2018, Damodar Arapakota and the Arapakota 2006 Family Trust (the Arapakota Parties) applied for a hearing and review of a decision of the TSX Venture Exchange, dated July 19, 2018, to grant approval for a private placement by Imex Systems Inc. (the TSX-V decision).
- [2] The Arapakota Parties sought orders, among other things:
- i. setting aside the TSX-V decision and directing that security holder approval of the issuance of the securities issued pursuant to the private placement is required;
 - ii. cease-trading the securities issued pursuant to the private placement; and

- iii. if necessary, an interim or temporary order ensuring that the securities issued pursuant to the private placement are not traded and that the recipients of securities issued pursuant to the private placement be restrained from trading the securities or exercising any voting rights in respect of any shares pending the outcome of the hearing.
- [3] On October 19, 2018, the Arapakota Parties, the TSX-V, Imex and the Executive Director made oral submissions on the application for hearing and review.
- [4] After considering the submissions of the parties, the panel found that the TSX-V should have required a shareholder vote before approving the private placement.
- [5] The panel reserved until November 2, 2018 its decision on the questions whether the orders sought by the Arapakota Parties were in the public interest and whether to grant those orders.
- [6] On October 19, 2018, the panel considered it to be in the public interest to make various temporary orders. The panel ordered, pursuant to sections 27 and 161(1) and (2) that:
- a) trading in the securities of Imex that were issued in the private placement cease until the panel has reached a decision on what orders are in the public interest, if any;
 - b) Imex take steps to enforce the cease-trade order set out above, which must include, at least:
 - (i) notifying Imex's transfer agent of the cease trade order;
 - (ii) communicating with the placees to the private placement that the cease-trade order has been made; and
 - (iii) taking no steps to remove any legend on securities relating to the private placement that have been cease-traded.
- [7] On October 23, 2018, the Secretary to the Commission mailed a copy of the decision setting out the temporary orders to all placees under the private placement, with a letter advising the placees of the application by the Arapakota Parties and offering the placees an opportunity to make submissions on that application.
- [8] The panel received further submissions from Imex, the Arapakota Parties and one of the placees under the private placement. The TSX-V did not take a position on the orders sought by the Arapakota Parties in its initial submissions in the hearing and review and did not provide any further submissions. The Executive Director provided no further submissions.

- [9] In its further submissions, the Arapakota Parties asked that the Commission grant orders that:
- a) Imex shall seek the approval of shareholders, as described in paragraph 9(c) below, of the issuance of shares issued pursuant to the private placement;
 - b) the shareholder approval sought by Imex under paragraph 9(a) be conducted in accordance with the TSX-V Company Manual and ask shareholders to either:
 - (i) ratify the issuance of the shares issued pursuant to the private placement; or
 - (ii) instruct the board of directors of Imex to take all necessary steps to reverse the issuance of the shares issued pursuant to the private placement;
 - c) a resolution of shareholders to instruct the board of directors of Imex to take all necessary steps to reverse the issuance of the shares issued pursuant to the private placement shall only take effect if there is a fundraising proposal satisfactory to Imex shareholders that will enable Imex to refund monies raised through the private placement;
 - d) if shareholders vote to instruct the board of directors of Imex to take all necessary steps to reverse the issuance of the shares issued pursuant to the private placement, the board of directors of Imex forthwith implement those instructions;
 - e) requiring Imex to provide an accounting of proceeds raised pursuant to the private placement;
 - f) unless and until the shareholders of Imex ratify the issuance of the shares issued pursuant to the private placement,
 - (i) the shares issued pursuant to the private placement be cease-traded; and
 - (ii) Imex and the chair of any Imex shareholder meeting shall not consider the shares issued pursuant to the private placement to be issued and outstanding for the purposes of voting at the meeting of Imex shareholders scheduled for November 22, 2018, and any adjournment thereof, and at any other meeting of shareholders of Imex.
- [10] Having considered all of the submissions on the appropriate orders, if any, in the circumstances, the panel, despite finding that the TSX-V should have required a shareholder vote before approving the private placement, declines to make any further orders in this proceeding. In the specific circumstances of this case, the panel considers that the actual and potential adverse consequences to the public interest of making any of

the orders requested by the Arapakota Parties (or any alternative orders) outweigh the actual and potential benefits to the public interest of making any orders.

[11] For greater certainty, considering that to do so would not be prejudicial to the public interest, the panel revokes the temporary orders made on October 19, 2018.

[12] Reasons will follow for the decisions in this order.

November 2, 2018

For the Commission

Nigel P. Cave
Vice Chair

Judith Downes
Commissioner

George C. Glover, Jr.
Commissioner