

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re : Chapter 11
: :
NIPPON ELECTRIC GLASS : Case No. 04-63851
OHIO, INC. : :
: : Judge John E. Hoffman, Jr.
Debtor. : :
: :

**MOTION AUTHORIZING THE DEBTOR TO
PAY POSTPETITION DEBTS INCURRED IN THE
ORDINARY COURSE OF BUSINESS**

Nippon Electric Glass Ohio, Inc. (the “Debtor”), the debtor and debtor in possession, hereby files this Motion (the “Motion”) requesting the entry of an order, attached hereto as Exhibit A, authorizing the Debtor to continue payment of postpetition debts incurred in the Debtor’s ordinary course of business. A memorandum in support of this Motion is provided below.

Date: September 20, 2004

Respectfully submitted,

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MEMORANDUM IN SUPPORT

Jurisdiction

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue of this proceeding and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief requested herein are sections 105(a), 363(c) 1107(a) and 1108 of Title 11 of the United States Code (as amended from time to time, the “Bankruptcy Code”).

Background

2. On September 1, 2004 (the “Petition Date”), the Debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business as a debtor-in-possession. No trustee, examiner, or creditors’ committee has been appointed in the Chapter 11 case.

3. The Debtor is in the business of manufacturing glass parts for cathode ray tubes used in television sets. The Debtor’s customers’ businesses rely on the timely delivery of the Debtor’s products, and the Debtor has achieved a reputation for reliability

and dependability among its customers. The Debtor cannot ensure timely delivery of product to its customers absent the goods and services provided by the Debtor's vendors and service providers. Thus, it is essential for the Debtor's business that it be allowed to pay for goods and services on an ongoing basis, ordered in its ordinary course.

Vendors and Service Providers

4. The Debtor seeks to pay all vendors and service providers (collectively, the "Providers") that provide postpetition goods and services to the Debtor in the ordinary course of Debtor's business. Prior to the Petition Date and also in the Debtor's ordinary course of business, the Debtor received goods and services from Providers.

5. Many of the Providers lack intimate knowledge about the inner workings of the Bankruptcy Code, and the protections it affords parties providing goods and services on a postpetition basis.¹ As a result of the commencement of the Chapter 11 case, the Debtor is concerned that some Providers may perceive that continuing to conduct business with the Debtor will present undesirable risks. It is important that the Debtor be able to provide assurance, beyond Debtor's representations and good faith, that postpetition obligations will be honored, and that payments of postpetition debts will be made in a timely manner.

6. Many of the Providers are not domestic businesses, or are owned and/or controlled by non-U.S. companies. In addition to language and cultural differences, legal differences could prove to be disruptive to the Debtor and its relationships with certain of the Providers. It is essential to the stability of Debtor's business to provide

¹ Among the protections afforded to Providers in the United States Bankruptcy Code's classification of postpetition debts as administrative expense priority claims pursuant, among other provisions, to section 503(b) and 507(a).

such assurance of payment to Debtor's Providers by the entry of an Order granting the relief sought in this Motion.

7. The preservation and maximization of the going concern value of the Debtor and its affiliates' businesses, including by maintaining positive cash flows and preserving business relationships, are among the Debtor's primary goals in this Chapter 11 case. For these reasons, the Debtor seeks to minimize the adverse business effect--and cash flow impact--of its Chapter 11 filing to the fullest extent possible by obtaining clear and unequivocal authority to pay the Providers for debts incurred postpetition in the ordinary course of Debtor's business.

Relief Requested

8. By this Motion, the Debtor seeks authority to pay the postpetition debts incurred in the ordinary course of Debtor's business to all of Debtor's Providers in order to encourage Providers to continue to conduct business with the Debtor and make timely deliveries of goods and services, and give Providers assurance that the payment of postpetition debts incurred by the Debtor are authorized and will be made in a timely manner.

Law and Argument

9. The Debtor submits that the relief sought herein is noncontroversial and entirely consistent with the applicable provisions of the Bankruptcy Code. In particular, the Debtor believes that obligations arising out of the postpetition provision of goods and services to the Debtor are expenses incurred for the benefit of Debtor's estate and ultimately assist in preserving (if not enhancing) the value in Debtor's business. As such, these costs are accorded administrative expense priority status under section 503(b)(1)(A) of the Bankruptcy Code. 11 U.S.C. § 503(b)(1)(A); *see also In re White*

Motor Corp., 831 F.2d 106, 110 (6th Cir. 1987). Accordingly, the requested relief *confirms* the preferred treatment of such postpetition obligations under the Bankruptcy Code in a manner necessary to provide Debtor's Providers with appropriate assurances of payment and, to ensure Debtor's uninterrupted receipt of essential goods and services.

10. In addition, to provide the requisite assurances to the Providers on an ongoing basis, the Debtor seeks authority, pursuant to section 363(c) of the Bankruptcy Code, to pay its undisputed obligations arising from the postpetition delivery of goods and services by the Providers, *provided, that*, such goods or services are accepted by the Debtor and at Debtor's request in the ordinary course of Debtor's business. The Bankruptcy Code expressly permits the immediate payment of these ordinary course amounts on a postpetition basis. 11 U.S.C. § 363(c).

11. Finally, under section 105 of the Bankruptcy Code, the Court has broad authority and discretion to issue orders necessary to "carry out the provisions of this title." 11 U.S.C. § 105(a). For all the reasons indicated above, the Debtor submits that the relief sought herein will lead to a successful reorganization and is appropriate in this case.

12. Similar relief has been granted in other large chapter 11 cases in this District and elsewhere. *See in re LTV Steel Company, Inc.*, No. 00-43866 (Bankr. N.D. Ohio Dec. 29, 2000); *In re Pittsburgh-Canfield Corp.*, No. 0043394 (Bankr. N.D. Ohio Nov. 17, 2000); *In re Federated Dep't Stores, Inc.*, Case No. 1-90-00130 (Bankr. S.D. Ohio Jan. 2, 1990); *In re Armstrong World Indus., Inc.*, No. 004471 (JJF)(D.Del. Dec. 7, 2000).

Reservation of Rights

Nothing in this Motion shall be construed as a request for authority to assume or reject any executory contract or unexpired lease under section 365 of the Bankruptcy Code. In addition, nothing in this Motion shall be deemed to modify or waive any of Debtor's rights, pursuant to the Uniform Commercial Code, or otherwise, with respect to goods and services requested from the Providers.

Request for Waiver of Stay

13. In connection with the foregoing, the Debtor seeks a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(g). “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise.” As set forth above, the prompt payment of Providers, within applicable terms, for debts incurred in the ordinary course of business is essential to prevent potentially irreparable damage to Debtor's operations, value and ability to reorganize. Accordingly, the Debtor submits that ample cause exists to justify a waiver of the 10-day stay imposed by Bankruptcy Rule 6004(g), to the extent that it applies.

Notice

14. No trustee, examiner or creditors' committee has been appointed in this chapter 11 case. Notice of this Motion has been provided to: (a) the United States Trustee; and (b) all of Debtor's creditors. In light of the nature of the relief requested herein, the Debtor submits that no other or further notice is required.

No Prior Request

15. No prior request for the relief sought in this Motion has been made to this or any other court in connection with this chapter 11 case.

Conclusion

WHEREFORE, based on the foregoing, the Debtor respectfully requests that the Court enter an order, substantially in the form attached hereto as Exhibit A, (a) authorizing Debtor, in its sole and absolute discretion and without further application to the Court, to pay the postpetition debts incurred in the ordinary course of Debtor's business to all of Debtor's Providers; and (b) granting the Debtor such other and further relief as the Court deems appropriate.

Respectfully submitted,

/s/ Lisa M. Diem

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EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

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: :
NIPPON ELECTRIC GLASS : Case No. 04-63851
OHIO, INC. : :
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**ORDER AUTHORIZING THE DEBTOR TO PAY
POSTPETITION DEBTS INCURRED
IN THE ORDINARY COURSE OF BUSINESS**

Upon the Motion Authorizing the Debtor to Pay Postpetition Debts Incurred in the Ordinary Course of Business (the “Motion”)²; it appearing that the relief requested is in the best interest of the Debtor’s estate, its creditors and other parties-in-interest; it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; sufficient notice of the Motion and the opportunity for a hearing on the Motion was appropriate under the particular circumstances and that no other and further notice need be given; it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157; it appearing that venue of this proceeding and the Motion is properly in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and after due deliberation and cause appearing therefore; it is hereby ORDERED that:

1. The Motion is granted.

² Capitalized terms used but not defined herein shall have the same meaning ascribed to them in the Motion.

2. Debtor is authorized, in its sole and absolute discretion, to continue payment of postpetition debts incurred in the Debtor's ordinary course of business ("Ordinary Course Payments").

3. Debtor is authorized, to make Ordinary Course Payments without any further intervention of this or any other Court.

4. Debtor is authorized to take all actions and execute all documents or refrain from any actions necessary or appropriate to implement the relief granted in this Order.

5. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

6. Notwithstanding the possible applicability of Bankruptcy Rules 6004(g), 7062, 9014, or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

7. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

IT IS SO ORDERED.

Copies to: Attached Service List