

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re)	Case No. 04-63851
)	
NIPPON ELECTRIC GLASS OHIO, INC.)	Federal I.D. No. 95-4658750
)	
Debtor.)	Chapter 11
)	
)	Judge John E. Hoffman, Jr.

**DEBTOR’S FIRST MOTION FOR AN ORDER PURSUANT TO 11 U.S.C. § 1121(d)
EXTENDING DEBTOR’S EXCLUSIVITY PERIODS FOR FILING CHAPTER 11 PLAN
AND SOLICITING VOTES THEREON**

Nippon Electric Glass Ohio, Inc., debtor-in-possession (the “Debtor”), hereby moves the Court for entry of an order, in the form attached as Exhibit A hereto, pursuant to 11 U.S.C. § 1121(d), extending the exclusive periods within which only the Debtor may file a Chapter 11 Plan and obtain acceptance thereof (the “Exclusivity Periods”) by 120 days, to and including April 29, 2005 for filing of the Plan and June 28, 2005 for obtaining acceptance of the Plan. A memorandum in support of this Motion is provided below.

November 17, 2004

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MEMORANDUM IN SUPPORT

JURISDICTION

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding under 28 U.S.C. § 157(b)(2).

2. The statutory predicates for the relief requested herein are 11 U.S.C. §§ 105 and 1121(d).

BACKGROUND

3. The Debtor is in the business of manufacturing glass parts for cathode ray tubes used in television sets. The Debtor has gross revenue of approximately \$20 million a year from sales to manufacturers of television sets.

4. On September 1, 2004 (the "Petition Date"), the Debtor filed a voluntary petition in this Court for reorganization relief under Chapter 11 of the Bankruptcy Code. 11 U.S.C. §§ 101, *et seq.* The Debtor continues to operate its business and manage its affairs as a debtor-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

5. No creditors' committee has been appointed in this case. No trustee or examiner has been appointed in this case.

6. The initial Exclusivity Periods to file a plan of reorganization and to obtain acceptance thereof will expire on December 30, 2004 (120 days from the Petition Date) and February 28, 2005 (180 days Petition Date), respectively.

PROPOSED RELIEF

7. By this Motion, the Debtor seeks entry of an order, pursuant to 11 U.S.C. § 1121(d), extending the Exclusivity Periods for Debtor to file a Plan and to obtain acceptance

thereof by 120 days each, from December 30, 2004 to and including April 29, 2005 to file a Plan, and from February 28, 2005 to and including June 28, 2005 to obtain acceptances of the Plan (collectively, the “First Extended Exclusivity Periods”). The Debtor seeks this relief without prejudice to its right to seek further extensions of the Exclusivity Periods in the future.

LAW AND ARGUMENT

8. Section 1121(b) of the Bankruptcy Code provides for an initial period of 120 days after the Petition Date during which the debtor has the exclusive right to file a Chapter 11 plan. Section 1121(c)(3) of the Bankruptcy Code provides that if the debtor files a plan within the 120 days after the Petition Date, it has 180 days after the Petition Date to solicit and obtain acceptances of such plan.

9. Pursuant to section 1121(d) of the Bankruptcy Code, on request of a party in interest, the Court may extend these exclusivity periods “for cause.” *In re Service Merchandise Co., Inc.*, 256 B.R. 744, 751 (Bankr. M.D. Tenn. 2000) citing *In re All Seasons Indus., Inc.*, 121 B.R. 1002 (Bankr. N.D. Ind. 1990).

10. The term “cause” is not defined by the Bankruptcy Code, and “the legislative intent has been construed to leave the question to the reorganization court in the exercise of its discretion and to promote maximum flexibility to suit various types of reorganization proceedings.” *In re AMKO Plastics, Inc.*, 197 B.R. 74, 77 (Bankr. S.D. Ohio 1995), citing *In re Public Service Co. of New Hampshire*, 88 Bankr. 521, 534 (Bankr. N.H. 1988).

11. Thus, a bankruptcy court considering whether the necessary “cause” exists to extend the exclusivity period “has a high degree of flexibility in fashioning the appropriate test to be applied, and is not required to apply any particular set of factors, or number of factors, in

every case.” *In re The Elder-Beerman Stores Corporation*, 1997 U.S. Dist. LEXIS 23785, *13 (S.D. Ohio 1997).

12. In this case, good cause exists for extending the Exclusivity Periods. The Debtor’s plan of reorganization will, to some extent, depend on the resolution of contingent liabilities that may be asserted against the Debtor on account of the insolvency and bankruptcy of the Debtor’s affiliate, Techneglas, Inc., the debtor in Case No. 04-63788 pending in this Court. The Debtor believes that efforts to resolve these contingent liabilities are only at a preliminary stage.

13. Techneglas, Inc. also has filed a motion to extend the exclusivity period by 120 days in its case, indicating that it is not able to file its plan of reorganization prior to the termination of the initial exclusivity period. The Debtor believes that it is in the best interests of its estate and creditors to await further progress on the development of Techneglas’ plan and resolution of the contingent liabilities that are interrelated with Techneglas’ case before formulating its own plan.

14. Since the Petition Date, the Debtor also has worked to maintain stable business operations and move forward in evaluating potential plan of reorganization issues. This is still a very young case and it is reasonable to request additional time to formulate and file a plan. In addition, the Debtor suffered a significant post-petition damage due to a fire in its Mexican subsidiary’s plant resulting in total destruction of the Debtor’s inventory and equipment. The Debtor is pursuing recovery of insurance proceeds and evaluating its business options, which may affect its reorganization plan.

15. The Debtor is not seeking an extension of the Exclusivity Periods to obtain an advantage over creditors and the Debtor believes that granting the First Extended Exclusivity

Periods will not prejudice creditors. Since the Petition Date, the Debtor has satisfied its administration obligations, is paying its post-petition debts as they become due, and expects to continue to pay such obligations and debts as they arise.

CONCLUSION

For the reasons discussed above, the Debtor respectfully requests that this Court enter an order, substantially in the form attached here as Exhibit A, granting the First Extended Exclusivity Periods, to and including April 29, 2005 for filing of the Debtor's Plan of Reorganization and to and including June 28, 2005 for soliciting acceptances of the Plan

Dated: November 17, 2004

Respectfully submitted,

/s/ Lisa M. Diem

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NOTICE AND CERTIFICATE OF SERVICE

Please take notice that any objection or memorandum contra to the *Debtor's First Motion for an Order Extending Debtor's Exclusivity Periods for Filing Chapter 11 Plan and Soliciting Votes Thereon* shall be filed and served no later than twenty (20) days after service of the Motion. If such an objection or memorandum contra is filed and served, the matter shall be heard at the next omnibus hearing at 10:00 a.m. (prevailing Eastern time) on December 9, 2004, at the United States Bankruptcy Court, 170 North High Street, Columbus, Ohio 43215.

Please take further notice that the Debtor may present a proposed order to the Court granting the relief sought without further notice unless an objection or memorandum contra is timely filed.

The undersigned hereby certifies that a copy of the forgoing Motion and Notice was served to those persons listed on the attached Service List, by regular U.S. Mail, postage prepaid, this 17th day of November, 2004.

/s/ Lisa M. Diem

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 OHIO, INC.)	Federal I.D. No. 95-4658750
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Debtor.)	Chapter 11
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)	Judge John E. Hoffman, Jr.

**ORDER GRANTING DEBTOR’S FIRST MOTION PURSUANT TO 11 U.S.C. § 1121(d)
EXTENDING DEBTOR’S EXCLUSIVITY PERIODS FOR FILING CHAPTER 11 PLAN
AND SOLICITING VOTES THEREON**

Nippon Electric Glass Ohio, Inc., debtor-in-possession (the “Debtor”), having filed the Debtor’s First Motion Pursuant to 11 U.S.C. § 1121(d) Extending Debtor’s Exclusivity Periods for Filing Chapter 11 Plan and Soliciting Votes Thereon (the “Motion”) [Docket No. _____]; and it appearing that the relief requested is in the best interests of the Debtor’s estate, its creditors and other parties in interest; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, that sufficient notice of this Motion and

the opportunity for a hearing on this Motion was appropriate and that no other and further notice need be given; and that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157; and after due deliberation and this Court finding that cause appears therefore;

IT IS HEREBY ORDERED that:

1. The Motion is granted.
2. The initial Exclusivity Periods (as defined in the Motion) are hereby extended through and including the First Extended Exclusivity Periods (as defined in the Motion).
2. The exclusivity period during which only the Debtor may file a Chapter 11 plan of reorganization under 11 U.S.C. § 1121(b) is hereby extended by 120 days, from December 30, 2004 to and including April 29, 2005.
3. The exclusivity period for the Debtor to obtain acceptance of a Chapter 11 plan of reorganization under 11 U.S.C. § 1121(c)(3) is hereby extended by 120 days, from February 28, 2005 to June 28, 2005.
4. This relief is without prejudice to the Debtor's right to seek further extensions of the Exclusivity Periods in the future.
5. The Debtor is authorized and empowered to take all actions and execute all documents or refrain from any actions necessary or appropriate to implement the relief granted in this Order.
6. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.
7. 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.

8. 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.

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