

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re)	Case No. 04-53851
)	
NIPPON ELECTRIC GLASS OHIO, INC.)	Federal I.D. No. 95-4658750
)	
Debtor.)	Chapter 11
)	
)	Judge John E. Hoffman, Jr.

**DEBTOR'S MOTION PURSUANT TO 11 U.S.C. §§ 105, 363, 364, 1107
AND 1108 FOR AUTHORIZATION TO CONTINUE USING
EXISTING BANK ACCOUNTS AND EXISTING BUSINESS FORMS**

Nippon Electric Glass Ohio, Inc., debtor-in-possession ("Debtor"), hereby moves the Court for entry of an order, pursuant to 11 U.S.C. §§ 105, 363, 364, 1107 and 1108, authorizing Debtor to continue using its existing bank accounts and business forms. This motion is supported by the Declaration of Katsuo Takeda filed herewith. In support of this Motion, Debtor states as follows:

I. BACKGROUND

A. The Debtor and Chapter 11 Filing

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

2. On September 1, 2004 (the "Petition Date"), 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.* Debtor continues to operate its business and manage its affairs as a debtor-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1109.

3. No creditor's committee has yet been appointed in this case. No trustee or examiner has been appointed in this case.

4. 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).

5. The statutory predicates for the relief requested herein are 11 U.S.C. §§ 105, 363, 364, 1107 and 1108.

II. RELIEF REQUESTED

6. Debtor seeks an order, substantially in the form attached hereto as Exhibit A, granting it authorization to:

a. Designate, maintain and continue to use its existing bank accounts ("Bank Accounts"), with the same information and numbers, and treat the Bank Accounts for all purposes as accounts of the Debtor, in its capacity as debtor-in-possession; and

b. Continue using all correspondence, business forms (including, but not limited to, letterheads, purchase orders and invoices), and checks existing immediately prior to the Petition Date without reference to Debtor's status as a debtor-in-possession.

III. BASIS FOR RELIEF

A. The Debtor's Bank Accounts

7. Debtor has the following two bank accounts, both of which are non-interest bearing checking accounts and used as operating accounts:

a. Account No. 359681008058 at Key Bank in Cleveland, Ohio; and

b. Account No. 233242 at Sumitomo-Mitsui Banking Corporation in New York, New York.

8. Debtor does not have a payroll account. Debtor's payroll is handled by an outside vendor with funds advanced from Debtor's operating accounts.

9. Debtor routinely deposits and withdraws funds into and out of its bank accounts by different methods, including by check, wire transfer, Automated Clearing House ("ACH") transfer and electronic fund transfer.

B. Debtor Should Be Granted Authority To Maintain And Use Its Existing Bank Accounts

10. The Office of the United States Trustee has established certain operating guidelines for debtors-in-possession in order to supervise the administration of chapter 11 cases. These guidelines require chapter 11 debtors to, among other things: (a) close all existing bank accounts and open new debtor-in-possession bank accounts; (b) establish a debtor-in-possession account for all estate monies required for the payment of taxes, including payroll taxes; (c) maintain a separate debtor-in-possession account for cash collateral; and (d) obtain checks for all debtor-in-possession accounts which bear the designation "Debtor-In-Possession," the bankruptcy case number, and the type of account.

11. Debtor seeks waiver of the United States Trustee's requirement that the Bank Accounts be closed and that new post-petition bank accounts be opened because such a process would cause unnecessary disruption in Debtor's business. The closing of existing accounts and creation of new accounts would inevitably result in expense, delay, confusion and disruption to Debtor's business, with no corresponding benefit to creditors and other parties with whom Debtor does business.

12. Courts recognize that strict enforcement of the bank account closing requirements does not always serve the rehabilitative purposes of chapter 11, and have therefore waived such requirements and replaced them with alternative procedures that provide the same protections. *See, e.g., SourceOne Wireless, Inc.*, Case No. 99-13841 (ERW) (Bankr. N.D. Ill. Feb. 1, 2000); *In re The Singer Company N.V. et al.*, Case Nos. 99-10578 through 99-10607, 99-10613, 99-10616 through 99-10629 and 00-10423 (BRL) (Bankr. S.D.N.Y. Sept. 15, 1999); *In re Venture Stores, Inc.*, No. 98-101 (D.Del. Jan. 20, 1998); *In re The Elder-Beerman Stores Corp., et al.*, No. 95-33643 (Bankr. S.D. Ohio, Oct. 17, 1995); *In re Gantos, Inc.*, No. 56 93-85478 (Bankr. W.D. Mich. Nov. 12, 1993).

13. Thus, in order to avoid delays in payments to administrative creditors, to avoid disruption and facilitate a smooth transition into chapter 11, and to aid Debtor's efforts to successfully and rapidly complete this case, the Court should: (a) deem the Bank Accounts

debtor-in-possession accounts; (b) permit Debtor to maintain its existing Bank Accounts and, if necessary, open new accounts (and give the U.S. Trustee notice of such newly opened accounts), wherever they are needed, irrespective of whether such banks are designated depositories in this District; and (c) authorize Debtor to continue using the Bank Accounts, in the same manner and with the same account numbers, styles, and document forms as those employed during the prepetition period, be authorized.

14. Debtor also requests that the Court authorize and direct the banks at which the Bank Accounts are maintained to continue to administer the Bank Accounts as such accounts were maintained prepetition, without interruption and in the usual and ordinary course, and to pay any and all checks, drafts, wires, or ACH transfers issued on the Bank Accounts on account of any claims arising on or after the Petition Date.

15. To the extent that Debtor has directed that any prepetition checks be dishonored, its reserves the right to issue replacements checks to pay the amounts related to such checks, consistent with the orders of this Court.

C. Debtor Should Be Granted Authority To Continue Using Existing Business Forms And Checks

16. In order to minimize the expenses to the estate, Debtor should be authorized to continue using all correspondence, business forms (including, but not limited to, letterheads, purchase orders and invoices) and checks existing immediately prior to the Petition Date without reference to Debtor's status as a debtor-in-possession.

17. Changing correspondence and business forms would be expensive, unnecessary, and disruptive to Debtor's business operations, with no corresponding benefit to creditors and other parties with whom the Debtor does business.

18. Further, changes would not confer any benefit upon those dealing with Debtor. Parties doing business with Debtor undoubtedly will be aware of Debtor's status as a debtor-in-possession and each of Debtor's vendors will receive direct notice of the commencement of this case.

19. For these reasons, courts routinely allow debtors to maintain their prepetition forms and checks. *See, e.g., SourceOne Wireless, Inc.*, Case No. 99-13841 (ERW) (Bankr. N.D. Ill. Feb. 1, 2000); *In re The Singer Company N.V. et al.*, Case Nos. 99-10578 through 99-10607, 99-10613, 99-10616 through 99-10629 and 00-10423 (BRL) (Bankr. S.D.N.Y. Sept. 15, 1999); *In re Venture Stores, Inc.*, No. 98-101 (D.Del. Jan. 20, 1998)); *In re The Elder-Beerman Stores Corp.*, et al., No. 95-33643 (Bankr. S.D. Ohio, Oct. 17, 1995); *In re Gantos, Inc.*, No. 56 93-85478 (Bankr. W.D. Mich. Nov. 12, 1993).

WHEREFORE, debtor Nippon Electric Glass Ohio, Inc. respectfully requests that the Court enter an order, substantially in the form of Exhibit A attached hereto, pursuant to 11 U.S.C. §§ 105, 363, 364, 1107 and 1108, authorizing Debtor to continue to use its existing bank accounts and business forms.

Dated: September 3, 2004

Respectfully submitted,

/s/ Lisa M. Diem

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Counsel for Debtor,
NIPPON ELECTRIC GLASS OHIO, INC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Debtor's *Motion Pursuant to 11 U.S.C. §§ 105, 363, 364, 1107 and 1108 for Authorization to Continue Using Existing Bank Accounts and Existing Business Forms* was served by regular U.S. Mail and/or facsimile service and/or electronic mail service as indicated on the receipt of filing, on all parties whose names are listed on the attached service list this 3rd day of September, 2004.

/s/ Lisa M. Diem

Lisa M. Diem

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United States Trustee
170 N. High Street, Suite 200
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EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re)	Case No. 04-53851
)	
NIPPON ELECTRIC GLASS OHIO, INC.)	Federal I.D. No. 95-4658750
)	
Debtor.)	Chapter 11
)	
)	Judge John E. Hoffman, Jr.

**ORDER GRANTING
MOTION PURSUANT TO 11 U.S.C. §§ 105, 363, 364, 1107
AND 1108 FOR AUTHORIZATION TO CONTINUE USING
EXISTING BANK ACCOUNTS AND EXISTING BUSINESS FORMS**

The Court having considered the Motion Pursuant to 11 U.S.C. §§ 105, 363, 364, 1107 and 1108 for Authorization to Continue Using Existing Bank Accounts and Existing Business Forms (“Motion”) filed by Debtor Nippon Electric Glass Ohio, Inc. (the "Debtor"), a hearing having been held on the Motion on September __, 2004 and the Court finding that timely and sufficient notice of such Motion under the circumstances having been given, and good cause appearing therefor,

IT IS HEREBY ORDERED as follows:

1. The Debtor's Motion is granted.
2. Debtor is authorized to maintain the bank accounts in existence on the date the case was commenced (the "Petition Date"), including its accounts at Key Bank and Sumitomo-Mitsui Banking Corporation, and such accounts are hereby deemed debtor-in-possession accounts. Debtor is authorized, if necessary, to open new accounts (giving the U.S. Trustee notice of any such newly opened accounts), wherever they are needed, irrespective of whether such banks are designated depositories in this District. Debtor is authorized to continue using the Bank Accounts in the same manner and with the same account numbers, styles, and document forms as those employed prepetition.
3. The banks at which the Bank Accounts are maintained are authorized and directed to continue to administer the Bank Accounts as such accounts were maintained prepetition, without interruption and in the usual and ordinary course, and to pay any and all checks, drafts, wires, or ACH transfers issued on the Bank Accounts on account of any claims arising on or after the Petition Date.
3. Debtor is authorized to continue using all correspondence, business forms (including, but not limited to, letterheads, purchase orders and invoices) and checks existing immediately prior to the Petition Date without reference to Debtor's status as a debtor-in-possession.

IT IS SO ORDERED.

cc: United States Trustee, 170 N. High Street, Suite 200, Columbus, Oh 43215
Lisa Diem and Kenneth Cookson, 65 East State Street, Suite 1800, Columbus, Ohio 43215
Adam Lewis and Patricia Mar, 425 Market Street, 33rd Floor, San Francisco, California 94105
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