

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

SUGARFINA, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 19-11973 (MFW)

(Jointly Administered)

Re: D.I. 62 & 268

**LIMITED OBJECTION OF THE OFFICIAL COMMITTEE
OF UNSECURED CREDITORS TO DEBTORS' SALE MOTION**

The Official Committee of Unsecured Creditors (the “Committee”) of Sugarfina, Inc., *et al.*, the above-captioned debtors and debtors in possession (collectively, the “Debtors”), by and through its proposed counsel, Bayard P.A., hereby submits this limited objection (the “Limited Objection”) to the *Debtors’ Motion for Entry of an Order: (I) (A) Approving Bidding Procedures and Protections in Connection with a Sale of Substantially All of Debtors’ Assets Free and Clear of Liens, Claims, Encumbrances, and Interests; (B) Scheduling an Auction and Sale Hearing; (C) Approving the Form And Manner of Notice Thereof; (D) Approving Procedures for the Assumption and Assignment of Contracts and Leases; and (E) Granting Related Relief and (II) (A) Authorizing and Approving the Sale of Substantially All the Debtors’ Assets Free and Clear of All Liens, Claims, Interests, and Encumbrances; (B) Authorizing and Approving the Assumption and Assignment of Certain Contracts and Leases; and (C) Granting Related Relief* [D.I. 62] (the “Motion”).² In support of this Limited Objection, the Committee respectfully states as follows:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number or Canadian Revenue Agency, as applicable are: (1) Sugarfina, Inc., a Delaware corporation (4356); (2) Sugarfina International, LLC, a Delaware limited liability company (1254); and (3) Sugarfina (Canada), Ltd. (4480). The location of the Debtors’ corporate headquarters is 1700 E. Walnut Ave., 5th Floor, El Segundo, California 90245.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Sale Motion.

BACKGROUND

1. On September 6, 2019 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 title 11 of the United States Code (the “Bankruptcy Code”). Since the Petition Date, the Debtors have remained in possession of their assets and have continued to operate and manage their businesses as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code.

2. On September 10, 2019, the Debtors filed the Motion seeking, among other things, approval of procedures for a proposed sale of substantially all of their assets free and clear of all liens, claims, interests, and encumbrances, with Candy Cube Holdings, LLC (“Candy Cube”) serving as the proposed stalking horse.

3. On September 17, 2019, the Office of the United States Trustee for Region 3 (the “U.S. Trustee”) appointed a seven (7) member committee of unsecured creditors pursuant to section 1102(a)(1) of the Bankruptcy Code [D.I. 97] comprised of: (i) Agman Investments LLC; (ii) Fedex Corporate Services, Inc.; (iii) Everplus F&B Fund, LLC; (iv) Marich Confectionery Company; (v) Efrutti; (vi) Right Click, Inc.; and (vii) AMAC. Thereafter, the Committee selected Bayard, P.A. to serve as its counsel and Province, Inc. to serve as its financial advisor.

4. On September 27, 2019, the Committee filed the *Omnibus Objection of the Official Committee of Unsecured Creditors to the Debtors’ Motions for (I) a Final Order Authorizing Postpetition Financing and (II) an Order Approving Bidding Procedures and Stalking Horse Agreement* [D.I. 166] (the “Omnibus Objection”).

5. Subsequent to the filing of the Omnibus Objection, the Debtors, in consultation with the Committee and other parties in interest, determined to replace the original stalking horse purchaser, Candy Cube, with a new stalking horse purchaser, Sugarfina Acquisition Corp (the “Stalking Horse Purchaser”).

6. On October 7, 2019, a hearing was held to consider the Motion with respect the proposed Bidding Procedures and the new stalking horse agreement. At that hearing, the Court approved the Bidding Procedures, with certain modifications, and approved the Stalking Horse Purchaser. On October 15, 2019, the Court held a status conference to further discuss the Motion. That same day, the Court entered an order approving the Bidding Procedures and stalking horse relief [D.I. 268] (the “Bid Procedures Order”).

7. Currently, the Auction is scheduled to take place on October 22, 2019 at 10:00 a.m. and the Sale Hearing is scheduled for October 24, 2019 at 10:30 a.m.

LIMITED OBJECTION

8. The Committee has worked hand-in-hand with the Debtors to ensure a value maximizing sale process and, broadly speaking, does not oppose the sale of the Debtors’ assets. The Committee continues to focus its efforts on achieving bids that ensure administrative solvency and that deliver meaningful value to all of the Debtors’ creditor constituencies. As a general matter, the Committee reserves its rights to object at the sale hearing to the extent that the selected bidder does not, in the Committee’s view, represent the highest or otherwise best offer for the Debtors’ assets. As to more specific concerns, the Committee has the following limited objections.

9. **First**, as permitted under the final order approving the Debtor’s post-petition financing the Committee has commenced an investigation of, among others, the purported liens and claims of SFCC Loan Investors, LLC (“SFCC”) and Goldman Sachs Specialty Lending Group L.P. (“Goldman”), including whether and to what extent each has properly perfected its liens on certain of the Debtors’ assets. Although the Committee does not oppose the relief requested by the Debtors in the Motion on this ground and intends to continue working with the Debtors and their lenders to resolve these issues, the Committee hereby reserves its rights to

contest the allocation and payment of proceeds from the Sale. At bottom, no proceeds of the Sale should be distributed to SFCC or Goldman Sachs, as prepetition lenders, until the nature and extent of their liens is resolved.

10. **Second**, the Debtors' various lenders should not be permitted to receive distributions from the sale in a manner that removes the important protections in the final postpetition financing order [D.I. 227] (the "**DIP Order**") that guard against administrative insolvency and help to ensure that the lenders pay the freight for the liquidation of their Collateral under the protections of this Court and the Bankruptcy Code. For example, the DIP Order provides that the Debtors' postpetition lenders (in both their roles as pre- and post-petition lenders) do not have a waiver of the estates' surcharge rights under section 506(c) of the Bankruptcy Code to the extent of unpaid claims under section 503(b)(9) of the Bankruptcy Code. *See* DIP Order, ¶ 22. The DIP Order further provides for a Carve-Out that is senior to the liens and claims of the Debtors' secured lenders. *See id.* at ¶ 9. No proceeds should be paid out of the estates to the postpetition lenders or SFCC in its capacity as a prepetition lender to the extent there are remaining 503(b)(9) claims to be paid or the Carve-Out has not been fully funded.

11. **Third**, no sale proceeds should be paid to Goldman at this time. Goldman was not provided any section 506(c) waiver under the DIP Order and following the sale, the Debtors and the Committee will need to determine a path forward. Although the Committee believes that those discussions will occur shortly and that all parties will engage in good faith, Goldman should not receive any sale proceeds until a wind-down strategy and budget have been developed and agreed.

12. **Finally**, to the extent Candy Cube is deemed to be the Successful Bidder, any order approving a sale to Candy Cube should not contain any releases in favor of Candy Cube. It is reasonable to believe that even if Candy Cube is the Successful Bidder, there may be

additional issues in these cases involving Candy Cube where the Debtors and other parties will need to assert defenses and potentially affirmative claims. It is inappropriate to provide a general release to Candy Cube under these circumstances.

13. The Committee reserves the right to raise further objections to the Sale prior to or at the hearing thereon in the event the concerns raised herein are not resolved prior to such hearing or if further changes to the Sale Order and related Sale documentation are proposed.

Dated: October 21, 2019
Wilmington, Delaware

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