

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

In re:

SGR WINDDOWN, INC., et al.,¹

Debtors.

Chapter 11

Case No. 19-11973 (MFW)
(Jointly Administered)

Hearing Date: June 16, 2020 @ 10:30 a.m. (ET)
Obj. Deadline: May 14, 2020 @ 4:00 p.m. (ET)

**MOTION OF SGR WINDDOWN, INC. ET AL.
FOR AN ORDER EXTENDING THE PERIODS DURING WHICH
DEBTORS MAY FILE A PLAN AND DISCLOSURE STATEMENT AND
SOLICIT ACCEPTANCES THEREOF PURSUANT TO 11 U.S.C. § 1121(d)**

The above-captioned Debtors (“Debtors”), move the Court (this “Motion”), for entry of an order, substantially in the form attached hereto as **Exhibit A** pursuant to section 1121(d) of title 11 of the United States Code (the “Bankruptcy Code”): (i) extending the period during which the Debtors have the exclusive right to file a plan (the “Exclusive Filing Period”) through and including July 5, 2020; and (ii) extending the period during which the Debtors have the exclusive right to solicit acceptances thereof (the “Exclusive Solicitation Period” and, together with the Exclusive Filing Period, the “Exclusive Periods”) through and including September 3, 2020 (the “Motion”). In support of the Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the 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)(2)(A) and (L). Venue of this proceeding and the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

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) SGR Winddown, Inc., a Delaware corporation (4356), (2) SGR Winddown International, LLC, a Delaware limited liability company (1254), and (3) SGR Canada Winddown Legacy, Ltd. (4480). The location of the Debtors’ corporate headquarters is 4712 Admiralty Way #552, Marina Del Rey, CA 90292.

2. The statutory predicates for the relief sought herein are sections 105(a) and 1121(d) of the Bankruptcy Code.

BACKGROUND

3. On September 6, 2019 (the “Petition Date”), the Debtors commenced their bankruptcy cases by filing with this Court their voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

4. The Debtors are authorized to operate their business and manage their property as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. No trustee or examiner has been appointed in these chapter 11 cases.

6. The Debtors have devoted substantial time to addressing various issues and engaging in substantial negotiations with the official committee of unsecured creditors and their lenders, as well as a litigation party.

7. The Debtors’ current Exclusive Filing Period under section 1121(b) of the Bankruptcy Code will expire on May 5, 2020. The Exclusive Solicitation Period will expire on July 2, 2020.

RELIEF REQUESTED

8. By the Motion, the Debtors seek to extend the Exclusive Filing Period for an additional ninety (90) days, from May 5, 2020, through and including August 3, 2020, and to extend the Exclusive Solicitation Period for an additional ninety (90) days, from July 2, 2020, through and including September 30, 2020. The Debtors further request that the order be without prejudice to their right to seek additional extensions of the Exclusive Periods for cause in accordance with section 1121(d) of the Bankruptcy Code.

BASIS FOR THE RELIEF REQUESTED

9. Section 1121 of the Bankruptcy Code provides for an initial period of 120 days after the commencement of a Chapter 11 case during which a debtor has the exclusive right to file a plan. *See* 11 U.S.C. §§ 1121(b) and (c)(2). If a plan is filed by the debtor within that 120-day period, no other party may file a plan for an additional sixty days (i.e., a total of 180 days from the filing date) so that the debtor has sufficient time to seek acceptances of its plan. *See* 11 U.S.C. §§ 1121(c)(3). Section 1121(d) of the Bankruptcy Code provides, however, that the court may, “for cause” shown, increase the 120-day and 180-day exclusive periods. *In re Gibson & Cushman Dredging Corp.*, 101 B.R. 405, 407 (E.D.N.Y. 1989) (finding that debtor’s assets would be enhanced rather than depleted by extending the exclusivity period).

10. Section 1121(d) of the Bankruptcy Code provides:

On request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause ... increase the 120-day period or the 180-day period referred to in this section.

11 U.S.C. §§ 1121(d).

11. Whether “cause” exists to extend a debtor’s exclusive periods to file and solicit acceptances of a plan is a decision committed to the sound discretion of the bankruptcy court based upon the facts and circumstances of each particular case. *See Gibson*, 101 B.R. at 409 (noting that bankruptcy court’s ruling must be upheld unless found to be clearly erroneous); *see also In re Texaco, Inc.*, 76 B.R. 322, 326 (Bankr. S.D.N.Y. 1987) (stating that cause might include an unusually large or an unusually small case, delay by the debtor or recalcitrance among creditors); *First Am. Bank of N.Y. v. Southwest Gloves and Safety Equip., Inc.*, 64 B.R. 963, 965 (D. Del. 1986). Although the term “cause” is not defined by the Bankruptcy Code, the legislative history indicates that it is to be viewed flexibly “in order to

allow the debtors to reach an agreement.” H.R. Rep. No. 95, 95th Cong., 1st Sess. 232 (1997). *See also In re McLean Indus., Inc.*, 87 B.R. 830, 833 (Bankr. S.D.N.Y. 1987) (quoting H.R. Rep. No. 595, 95th Cong., 2d Sess. 231 (1978), reprinted in 1978, U.S.C.C.A.N. 5963, 6190); *In re Amko Plastics, Inc.*, 197 B.R. 74, 77 (Bankr. S.D. Ohio 1996); *Gibson*, 101 B.R. at 409 (citing *In re Public Service Company of New Hampshire*, 88 B.R. 521, 534 (Bankr. D. N.H. 1988) (“[T]he legislative intent ... [is] to promote maximum flexibility”)).

12. To facilitate this legislative intent, a debtor should be given a reasonable opportunity to negotiate an acceptable plan with creditors and to prepare adequate financial and non-financial information concerning the ramifications of any proposed plan for disclosure to creditors. *See McLean Indus.*, 87 B.R. at 833–34; *In re Texaco Inc.*, 76 B.R. 322, 327 (Bankr. S.D.N.Y. 1987).

13. Courts have relied on a variety of factors when determining whether cause exists for an extension of the Exclusive Periods, each of which may provide sufficient grounds for extending the Exclusive Periods. These factors include (1) the size and complexity of the case, (2) the necessity of sufficient time to negotiate and prepare adequate information, (3) the existence of good faith progress toward reorganization, (4) whether the debtor is paying its debts as they come due, (5) whether the debtor has demonstrated reasonable prospects for filing a viable plan, (6) whether the debtor has made progress in negotiating with creditors, (7) the length of time the case has been pending, (8) whether the debtor is seeking the extension to pressure creditors, and (9) whether unresolved contingencies exist. *See, e.g., In re Dow Corning Corp.*, 208 B.R. 661, 664-65 (Bankr. E.D. Mich. 1997); *In re Express One Int'l, Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex 1996); *In re Grand Traverse Dev. Co. Ltd. P'ship*, 147 B.R. 418, 420 (Bankr. W.D. Mich. 1992); *In re Texaco, Inc.*, 76 B.R. at 327. These are, however, only factors, not all

of which are relevant in every case. *See In re Federated Dep't Stores and Allied Stores Corp.*, 1990 Bankr. Lexis 711, *6 (Bankr. S.D. Ohio 1990). Moreover, no one factor is dispositive, and the Court is not restricted to counting factors. *Dow Corning*, 208 B.R. at 669. Here, the factors weigh in favor of extending the Exclusive Periods.

14. The negotiations with the Official Committee of Unsecured Creditors and lenders are proceeding in earnest but have not yet been concluded, and issues with litigation parties, have impeded the Debtors efforts to prepare and file a plan in these cases. The Debtors have made significant progress in their chapter 11 cases, having resolved many of the outstanding issues.

15. All of the above mentioned issues and the importance of a proper resolution in these matters would justify an extension of the Debtors' exclusive period to file a plan. The fact that the Debtors is working toward a resolution of all open issues simultaneously supports a reasonable extension of time. In addition, the various possible outcomes of these situations would have a material effect on any proposed plan's feasibility.

I. The Debtors Have Made Progress Toward Resolving Many Issues Facing Its Creditors

16. An extension of a debtor's exclusive periods also is justified by a debtor's progress in resolving issues facing its creditors. *In re Amko Plastics, Inc.*, 197 B.R. at 77 (Bankr. S.D. Ohio 1996) (granting extension due to the reasonably rapid turnaround of the business); *In re Pine Run Trust, Inc.*, 67 B.R. 432, 435 (Bankr. E.D. Pa. 1986) (granting extension due to substantial progress in negotiations critical to reorganization); *Swatara Coal Co.*, 49 B.R. at 900 (Bankr. E.D. Pa. 1985) (granting extension in light of ongoing negotiations). In this case, the Debtors' progress in negotiations with creditors is significant and warrants an extension of the Exclusive Periods.

II. The Debtors Are Not Using Exclusivity To Pressure Creditors

17. Courts have denied extension of exclusive periods where plan negotiations among parties in interest have broken down, and the continuation of exclusivity would merely give the debtor unfair bargaining leverage over the other parties in interest. *See Gibson*, 101 B.R. at 409; *In re Lake in the Woods*, 10 B.R. 338, 345 (E.D. Mich. 1981) (request for extension should not be used to provide “undue bargaining leverage” to delay and thereby “force a settlement out of otherwise unwilling creditors”); *Dow Corning*, 208 B.R. at 670 (stating that an extension of the exclusive period should be denied if debtors appeared to be attempting to delay the administration of the bankruptcy case).

18. The Debtors’ request for an extension of the Exclusive Periods is not a negotiation tactic, but instead merely a reflection of the fact that this case is not ripe for the formulation and confirmation of a viable and feasible plan by any party in interest.

NOTICE

19. Notice of the Motion has been given to the following parties, or in lieu thereof, to their counsel, if known: (i) the United States Trustee; (ii) all parties who have filed notices of appearance in the Debtors’ cases; and (iii) all creditors. In light of the nature of the relief requested, the Debtors submit that the notice provided is appropriate under the circumstances and that no further notice need be given.

NO PRIOR RELIEF

20. No prior request for the relief sought herein has been made to this or any other Court.

CONCLUSION

21. The extensions of the Exclusive Periods sought herein will not harm or prejudice the Debtors' creditors or other parties in interest in this case and will, in the Debtors' opinion, further the intent of section 1121 of the Bankruptcy Code, which is to afford debtors a meaningful and reasonable opportunity to negotiate with their creditors and to propose and confirm a consensual plan. Accordingly, the Debtors submit that the extension of the Exclusive Periods requested herein is reasonable and appropriate under the circumstances and should be granted as being in the best interests of the Debtors' estates and creditors.

WHEREFORE, the Debtors respectfully request that this Court enter an Order granting the Motion and authorizing such other and further relief as this Court deems just and proper.

DATED: April 30, 2020

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