



ENTERED  
11/14/2020

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**In re**

**NPC INTERNATIONAL, INC.,  
et al.,**

**Debtors.<sup>1</sup>**

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**Chapter 11**

**Case No. 20–33353 (DRJ)**

**(Jointly Administered)**

**Re: Docket No. 994, 995, 1036, 1038**

**ORDER (I) APPROVING THE DEBTORS' SELECTION OF A  
STALKING HORSE BIDDER, (II) APPROVING BID PROTECTIONS  
IN CONNECTION THEREWITH, AND (III) GRANTING RELATED RELIEF**

Upon the motion, dated November 6, 2020 (the “**Motion**”),<sup>2</sup> of NPC International, Inc. and its debtor affiliates, as debtors and debtors in possession (collectively, the “**Debtors**”), pursuant to sections 105, 363, 503, and 507 of the Bankruptcy Code, the Debtors seek entry of an order (a) approving the Stalking Horse Bidder, (b) authorizing the bid protections in connection therewith, and (c) granting related relief, as more fully set forth in the Motion; and this Court having entered an order on September 25, 2020 (Docket No. 693) (the “**Bid Procedures Order**”) approving, among other things, the proposed form of notice of the Sale Hearing; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and the Court having held a hearing on the Motion on November 13, 2020 (the “**Hearing**”); and upon the record of the Hearing and upon all of the proceedings had before the Court; and all objections, if any, to the Motion having been withdrawn, resolved, or overruled;

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are NPC International, Inc. (7298); NPC Restaurant Holdings I LLC (0595); NPC Restaurant Holdings II LLC (0595); NPC Holdings, Inc. (6451); NPC International Holdings, LLC; (8234); NPC Restaurant Holdings, LLC (9045); NPC Operating Company B, Inc. (6498); and NPC Quality Burgers, Inc. (6457). The Debtors’ corporate headquarters and service address is 4200 W. 115th Street, Suite 200, Leawood, KS 66211.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors and their respective estates, creditors, and all parties in interest; and after due deliberation and sufficient cause appearing therefor, **THE COURT HEREBY FINDS AS FOLLOWS:**<sup>3</sup>

A. **Jurisdiction and Venue**. The Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334, and venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. **Notice of the Motion**. As reflected in the certificate of service filed on November 11, 2020 (Docket No. 1013), the Motion and the notice of the Hearing was served on the Court's electronic filing system and the Notice Parties. The notice of the Motion and the Hearing is reasonable and sufficient in light of the circumstances and nature of the relief requested in the Motion, and no other or further notice of the Motion or the Hearing is necessary. A reasonable and fair opportunity to object to the Motion and the relief granted in this Order has been afforded under the circumstances.

C. **Stalking Horse Bid and Bid Protections**. The Debtors have demonstrated and proven that their performance of the obligations related to the Stalking Horse Bid and the Bid Protections is in the best interests of the Debtors, their creditors, their estates, and all parties in interest, and that the foregoing represents a sound exercise of the Debtors' business judgment. The Debtors have articulated good, sufficient, and sound business justifications for performance of the obligations related to the Stalking Horse Bid and the Bid Protections. Namely, among other things,

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<sup>3</sup> The findings of fact and conclusions of law herein constitute the Court's findings of fact and conclusions of law for the purposes of Bankruptcy Rule 7052, made applicable pursuant to Bankruptcy Rule 9014. To the extent any findings of facts are conclusions of law, they are adopted as such. To the extent any conclusions of law are findings of fact, they are adopted as such.

(1) the Stalking Horse Bid constitutes the highest or otherwise best offer that the Debtors have received to date; (2) the approval of the relief requested is a necessary and constructive step toward the completion of the sale process; and (3) the Stalking Horse Bid and the Bid Protections allow the Debtors to solicit the highest or otherwise best bid for the Assets through the Bid Procedures.<sup>4</sup>

D. The Bid Protections (1) are an actual and necessary cost and expense of preserving the Debtors' estates within the meaning of section 503(b)(1)(A) and section 507(a)(2) of the Bankruptcy Code; and (2) are fair, reasonable, and appropriate, including in light of the size and nature of the Sale Transaction, the commitments that have been made, and the efforts that have been and will be expended by the Stalking Horse Bidder. The Bid Protections are necessary to induce the Stalking Horse Bidder to pursue the Sale Transaction and to be bound by the Stalking Horse APA. Further, the Bid Protections were negotiated by the parties at arm's-length and in good faith by the Debtors and Stalking Horse Bidder.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The MOTION IS GRANTED, as set forth herein.
2. Wend American Group LLC and Hut American Group LLC (collectively, "**Flynn**") shall be the Stalking Horse Bidder for the Assets.
3. The Bid Protections are hereby approved and the Debtors are hereby authorized to pay the Bid Protections to the Stalking Horse Bidder pursuant to the terms and subject to the conditions of the Stalking Horse APA; *provided* that in the event that the Break-Up Fee is due and owing in accordance with the Stalking Horse APA, the Break-Up Fee shall only be payable from the proceeds of a Competing Bid actually received by the Debtors upon consummation thereof.

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<sup>4</sup> The Stalking Horse Bid will serve as a minimum or floor bid on which the Debtors and their stakeholders may rely. As such, the Stalking Horse Bidder and the Bid Protections are providing a material benefit to the Debtors and their creditors by increasing the likelihood that the best possible price for the Assets will be received.

4. To the extent the Debtors intend to terminate the Stalking Horse APA in accordance with section 11.01(f) of the Stalking Horse APA to consummate a Competing Bid for less than substantially all of the Debtors' assets and proceed with a reorganization transaction around the remaining assets (the "**Partial Sale and Partial Reorg Transaction**"), despite the Stalking Horse Bidder having satisfied section 10.02(g) of the Stalking Horse APA, the Debtors shall file a notice of intent, serve the Notice Parties, and provide a five (5) day objection period (the "**Objection Period**"); *provided* that if a party in interest files and serves a written objection so that such objection is filed with the Bankruptcy Court and is actually received by the Notice Parties as well as counsel to the Debtors within the Objection Period (an "**Objection**"), the Debtors shall seek an emergency hearing, and shall consult with the Stalking Horse Bidder, the Ad Hoc Priority/First Lien Lenders, and the Creditors' Committee with respect to the date and time of such hearing, to consider the unresolved Objection and such hearing shall be held on an expedited basis; *provided* further that if no Objection is timely filed during the Objection Period or the Objection is overruled, withdrawn, or consensually resolved, the Debtors are authorized to terminate, without further Court approval, the Stalking Horse APA (subject to the terms thereunder) and proceed with the Partial Sale and Partial Reorg Transaction.

5. Notwithstanding anything to the contrary in the Bid Procedures or Bid Procedures Order, the term "Outside Back-Up Date" as used in paragraph 16(m) of the Bid Procedures shall be March 15, 2021, and the Outside Date under the Stalking Horse APA is hereby valid and does not contravene the Bid Procedures or Bid Procedures Order.

6. Notwithstanding anything contained in the Stalking Horse APA to the contrary, the franchisor-franchisee relationship between Pizza Hut LLC and its affiliates (collectively, "**Pizza Hut**"), on the one hand, and the Stalking Horse Bidder, on the other hand,

shall be governed by the operative documents entered into between Pizza Hut and the Stalking Horse Bidder governing such relationship (the “**PH Governing Documents**”). In the event of any conflict between this Stalking Horse APA and the PH Governing Documents as it relates to the relationship between Pizza Hut and the Stalking Horse Bidder, the terms of the PH Governing Documents shall control.

7. Notwithstanding anything contained in the Stalking Horse APA to the contrary, the franchisor-franchisee relationship between The Wendy’s Company and/or Quality is Our Recipe, LLC (collectively, “**The Wendy’s Company**”), on the one hand, and the Stalking Horse Bidder, on the other hand, shall be governed by the operative documents entered into between the Wendy’s Company and the Stalking Horse Bidder governing such relationship (the “**Wendy’s Governing Documents**”). In the event of any conflict between this Stalking Horse APA and the Wendy’s Governing Documents as it relates to the relationship between The Wendy’s Company and the Stalking Horse Bidder, the terms of the Wendy’s Governing Documents shall control.

8. Notwithstanding anything herein to the contrary, the entry of this Order and the relief granted hereby is without prejudice to (a) the rights of any of the Debtors’ sureties, including, Arch Insurance Company (each a “**Surety**” and, collectively, “**Sureties**”) under the Bid Procedures Order, and (b) the right to object to or respond to the Sale Transaction, the Stalking Horse APA, or any other document, agreement or instrument contemplated by any of the foregoing, and all such rights, including, without limitation, the right to object to an involuntary substitution of principal under any surety bond, are reserved and preserved in all respects.

9. Nothing in this Order, or the Stalking Horse APA, shall be deemed to waive any rights, remedies or defenses that the Sureties have or may have under applicable bankruptcy

and non-bankruptcy laws, under any indemnity agreements, surety bonds or related agreements, or any letters of credit relating thereto. The rights of the Debtors and all other parties in interest are expressly preserved to dispute any such rights, remedies, or defenses asserted by the Sureties.

10. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h) and 6006(d), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

11. The Debtors are authorized to take all steps necessary or appropriate to carry out the relief granted in this Order.

12. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

13. Notwithstanding entry of this Order, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by, any party.

**Signed: November 14, 2020.**

  
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**DAVID R. JONES**  
**UNITED STATES BANKRUPTCY JUDGE**