

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

Caption in Compliance with D.N.J. LBR 9004-1(b)

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In Re:

ALUMINUM SHAPES, L.L.C.,

Debtor.

Chapter 11

Case No. 21-16520-JNP

Hon. Jerrold N. Poslusny, Jr.

**JOINDER OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF
ALUMINUM SHAPES, L.L.C. TO THE DEBTOR'S EXPEDITED MOTION FOR AN
ORDER APPROVING BID PROTECTIONS PURSUANT TO
AN ASSET PURCHASE AGREEMENT FOR THE SALE OF SUBSTANTIALLY ALL
OF THE DEBTOR'S ASSETS**

The Official Committee of Unsecured Creditors (the "Committee") appointed in the above-caption chapter 11 case for the above-captioned Debtor respectfully submits this joinder (the "Joinder") to the Debtor's *Expedited Motion for an Order Approving Bid Protections Pursuant to an Asset Purchase Agreement for the Sale of Substantially All of the Debtor's Assets*,

and for Related Relief [Docket No. 132] (as corrected at Docket No. 136) (the “Bid Protections Motion”).

BACKGROUND¹

1. On August 15, 2021 (the “Petition Date”), the Debtor commenced its case by filing a voluntary petition for relief under chapter 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”). No trustee or examiner has been appointed in the Debtor’s case, and the Debtor continues to operate its business as a debtor-in-possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code.

2. On September 1, 2021, the Office of the United States Trustee for Region 3, appointed five members to the Committee pursuant to section 1102(a)(1) of the Bankruptcy Code [Docket No. 77]. The members of the Committee are: (i) Indigo Global, LLP; (ii) PSE&G; (iii) Nathan H. Kelman, Inc., (iv) Energy Power Investment Company, LLC (EPIQ); and (v) Southeastern Extrusion & Tool, Inc. The Committee chose Fox Rothschild LLP as its counsel on September 2, 2021 and on September 3, 2021, the Committee chose Berkley Research Group (“BRG”) as its financial advisor.

A. The Bid Procedures Motion

3. On September 15, 2021, Debtor filed the *Debtor’s Motion For (I) An Order (A) Approving The Bidding Procedures And Form Of Asset Purchase Agreement For The Sale Of Certain Of The Debtor’s Assets Including Approval Of Provisions For Designation Of A Stalking Horse And Bid Protections, (B) Establishing The Notice Procedures And Approving The Form And Manner Of Notice Thereof, (C) Approving Procedures For The Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases, (D) Scheduling A Sale Hearing, (E)*

¹ The capitalized terms not defined herein shall have the meanings as set forth in Debtor’s Sale Motion or Bid Protections Motion.

Granting Expedited Consideration; And (F) Granting Related Relief, And (II) An Order (A) Approving The Sale Of The Debtor's Business Or Assets Free And Clear Of All Liens, Claims, Encumbrances, And Other Interests, (B) Approving The Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases Related Thereto, And (C) Granting Related Relief(the "Sale Motion") [Docket No. 94].

4. The Sale Motion also requested authority to provide certain Bid Protections to the entity that the Debtor would later choose and designate as a Stalking Horse.

5. However, at the hearing on the Sale Motion, this Court denied the Debtor's request to approve, in advance of the designation of a stalking horse, a break-up fee, without prejudice to the Debtor's right to later request such relief on an expedited basis.

6. On September 30, 2021, the Bid Procedures Order was entered (the "Bid Procedures Order") [Docket No. 122].

B The Asset Purchase Agreement

7. On September 30, 2021, the Debtor entered into an Asset Purchase Agreement ("APA") with the proposed Purchaser, CGPN, LLC, subject to Bankruptcy Court approval, agreeing to sell substantially all of its Assets to the Purchaser, following the opportunity for an auction, and on October 1, 2021, the Debtor filed its *Notice Of Debtor's Selection Of Stalking Horse Bidder for the Sale Of Substantially All of the Debtor's Assets Pursuant To 11 U.S.C. Section 363 of The Bankruptcy Code, 11 U.S.C. Sections 101 et. seq. and the September 30, 2021, Bid Procedures Order* (the "Stalking Horse Selection Notice"), identifying CGPN, LLC (the "Stalking Horse") as the Stalking Horse Bidder.

8. The Debtor requests approval of the Bid Protections provision of the Stalking Horse APA, allowing the Debtor to offer the Stalking Horse a break-up fee in the amount of two percent

(2%) of the total purchase price (the “Break-Up Fee”) and an Expense Reimbursement of up to \$75,000.00, (together with the Break-Up Fee, the “Bid Protections”), which shall not exceed 3% of the Purchase Price.

9. Providing Bid Protections to the Stalking Horse is a specific condition relating to the Purchaser’s agreement to act as the Stalking Horse, and to the Stalking Horse’s entry into, and continuing obligations under, the APA. Further, approval of the Bid Protections will help create a robust auction for the Debtor’s Assets.

JOINDER

10. The Committee supports, without hesitation, the awarding of Bid Protections to the Stalking Horse as outlined in the Bid Protections Motion. Providing Bid Protections of the nature requested here is common and required by most parties as a condition to becoming a stalking horse bidder.

11. Approval of the Bid Protections provide two important elements to the sale process: First, the approval of the Bid Protections will allow the Stalking Horse Bid to create the minimum floor bid upon which other bidders can rely upon, and second, the Bid Protections will create a more robust and competitive auction.

12. For the reasons set forth herein and in the Debtor’s Bid Protections Motion, the Committee hereby joins in the Debtor’s request for Court approval of the Bid Protections.

RESERVATION OF RIGHTS

13. Nothing contained in this Joinder shall be deemed as a waiver of any right of the Committee to object to the sale of substantially all of the Debtor’s assets pursuant to 11 U.S.C. § 363 or otherwise and the Committee specifically reserves all rights with respect thereto.

WHEREFORE, based on the foregoing, the Committee respectfully requests that the Court grant the Debtor's Bid Protections Motion and any additional relief that is consistent therewith.

Dated: October 6, 2021

**THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS**

FOX ROTHSCHILD LLP

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Michael J. Viscount, Jr.

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