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| UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY | |
| <i>Caption in Compliance with D.N.J. LBR 9004-1(b)</i> OBERMAYER REBMANN MAXWELL & HIPPEL LLP Edmond M. George, Esquire Michael D. Vagnoni, Esquire (pro hac vice) Turner Falk, Esquire 1120 Route 73, Suite 420 Mount Laurel, NJ 08054-5108 Telephone: (856) 795-3300 Facsimile: (856) 482-0504 E-mail: edmond.george@obermayer.com michael.vagnoni@obermayer.com turner.falk@obermayer.com | |
| Proposed Counsel to the Debtor and Debtor in Possession | |
| In re: | Chapter 11 |
| ALUMINUM SHAPES, L.L.C., | Case No. 21-16520-JNP |
| Debtor. | |

SUPPLEMENTAL DECLARATION OF JUSTIN MAGNER CERTIFYING AUCTION RESULTS AND IN FURTHER SUPPORT OF DEBTOR’S MOTION FOR AN ORDER APPROVING THE SALE OF ALL OF THE DEBTOR’S ASSETS

I, Justin Magner, declare pursuant to 28 U.S.C. § 1746, that:

1. I am a Director in the Special Situations and Restructuring practice of Cowen and Company, LLC (“**Cowen**”).
2. I submit this Declaration (the “**Declaration**”) certifying the results of the auction of the Debtor’s assets (the “**Auction**”) and in further support of the motion of Aluminum Shapes,

L.L.C. (the “**Debtor**”) for approval of Bid Protections and for the sale of substantially all of the Debtor’s assets and related relief (the “**Sale Motion**”).¹

3. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge, my review of relevant documents, my discussions with other members of the Cowen team, the Debtor’s management team, and the Debtor’s other advisors, my review of information concerning the Debtor’s operations, financial affairs, and restructuring initiatives, and my opinions based upon my experience and knowledge.

4. If called as a witness, I could and would testify competently to the facts set forth in this Declaration on that basis. I am authorized to submit this Supplemental Declaration on behalf of the Debtor in connection with its Motion to Approve Bid Procedures.

5. I incorporate by reference my original Declaration [docket no. 94-6] filed in connection with the Sale Motion, as if set forth fully herein and at length.

6. Cowen has contacted in excess of 190 potential buyers, executing more than **75** non-disclosure agreements (“**NDAs**”). The potential buyers have performed significant diligence on the Debtor’s Business and Assets. The Debtor conducted numerous virtual and in-person meetings and site tours with potential buyers.

7. To enable it to continue operations through a Sale, the Debtor sought post-petition DIP lending from its prepetition lender, Tiger Finance LLC (the “**DIP Lender**”).

8. Pursuant to the Debtor’s motion for DIP lending (DI #15) this Court entered a final DIP order (the “**Final DIP Order**”) on September 29, 2021. (DI #116).

9. The Final DIP Order provided, in relevant part, that the DIP Lender was granted an administrative superpriority and first-priority priming liens on all Debtor assets pursuant to 11

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Sale Motion or the Bidding Procedures Order.

U.S.C. §364(c) and was authorized to provide DIP financing in an amount up to \$15,500,000.00, including a roll-up of \$9,270,525.89 of prepetition debt owed to the DIP Lender.

10. The Final DIP Order provided that the Debtor's failure to meet any milestone in the underlying credit agreement – including the Sale timeline – would constitute a default.

11. Pursuant to the underlying credit agreement, the DIP Lender is entitled to a default fee of \$250,000.00 upon the occurrence of a default. The DIP Lender is also authorized to cease distributions and demand payment in full upon default, and assess substantially higher interest on the amount due.

12. The Debtor filed a motion to approve certain bid procedures for an auction and Sale of the Debtor's Business or Assets (the "**Bid Procedures**").

13. The Bid Procedures set forth the following milestone dates, which were approved by the DIP Lender:

- a. Deadline to Submit Qualified Bids: October 22, 2021
- b. Original Auction Date: October 25, 2021
- c. Sale Objection Deadline: October 27, 2021
- d. Sale Hearing: October 28, 2021

14. By a September 30, 2021 order, this Court approved the form and substance of the Bid Procedures. (DI #122).

15. The Debtor subsequently entered into an asset purchase agreement with CGPN, LLC (the "**Stalking Horse**"), whereby the Stalking Horse would act as the stalking horse bidder for the Debtor's Assets.

16. Upon the Debtor's motion (DI #136), the Court approved certain bid protections, including break-up fees (the "**Bid Protections**") (DI #158) on October 8, 2021.

17. Several bidders qualified to participate in the Original Auction.

18. On the eve of the Original Auction, a strategic purchaser Norsk Hydro, LLC contacted the Debtor about its potential to offer significant consideration for a going-concern sale, that preserved an ongoing business in the same location and safeguarded the approximately 110 employees' jobs. Norsk Hydro paid the Debtor's estate \$2,250,000.00 to fund the Debtor's operations for several weeks while it (Norsk Hydro) conducted further diligence in an effort to be in position to potentially purchase the Debtor's assets as a going concern.

19. Believing that obtaining an offer from this strategic party was in the Debtor's best interest, and also in the best interest of its estate and creditors, the Debtor adjourned the Original Auction date without first securing the requisite prior consent of the DIP Lender. The Debtor's failure to conduct the Auction in accordance with the milestones contained in the DIP Credit Agreement and Final DIP Order constituted an Event of Default ("**Milestone Default**") under the DIP Credit Agreement and Final DIP Order.

20. The Debtor subsequently filed a Motion to both Modify the DIP Credit Agreement (and the Milestones) and to pay an extension fee to the Stalking Horse Bidder, which was approved by this court by order entered November 5, 2021 (DI #229; DI #230).

21. The following new auction and sale timeline was set by the Court:

- a. Auction: 10:00 AM, November 10, 2021;
- b. Sale Objection Deadline: 4:00 PM, November 11, 2021;
- c. Sale Hearing: 10:00 AM, November 12, 2021;
- d. Sale Closing date: No later than December 1, 2021.

22. On November 6th, 2021 the Debtor received notice that Norsk Hydro would not be proceeding with a strategic purchase. This triggered the Debtor's obligations to proceed to an auction of its Assets.

23. Pursuant to the Amended Bid Procedures Order, the Debtor provided Notice of the Scheduling of the Auction to all interested bidders, and the Debtor conducted the Auction on November 10, 2021. The Auction provided interested parties (as well as Debtor professionals and Consultation Parties) the opportunity to participate in-person, virtually via Zoom, or a combination of the two methods (a hybrid approach). All Qualified Bidders participated in the Auction.

24. In accordance with the general order Adopting Guidelines for Sale of Real Estate dated March 9, 2009, the Auction was held at a specified location, in this case at the property of the Debtor. Each Qualified Bidder confirmed that it had the ability to perform under its respective APA, and that they had not engaged in collusion, among other representations. The Auction was recorded stenographically.

25. Present at the Auction were representatives for the Debtor's professional team including, but not limited to, its attorneys from Obermayer Rebmann Maxwell and Hippel, LLP, and its Advisors from Cowen, Riveron (f/k/a Winter Harbor), and Berwyn Capital; counsel to the DIP Lender from Riemer & Braunstein LLP, Anthony Stumbo, Esquire and the DIP Lender's principal Andrew Babcock; Fox Rothschild O'Brien and Frankel, Michael Viscount, counsel to the UCC; and Joseph Vizzini and Mackenzie Shea of BRG Financial Advisors, financial advisor to the UCC, all of whom assisted the Debtor and provided consultation to the Debtor during the Auction.

26. Six Bidders were Qualified for the Auction. No prospective Bidder was excluded. Further, the Debtor authorized any Qualified Bidder to make offers on any of the lots, to ensure the largest number of participants in the Auction.

27. The Auction began at 10:00 AM Eastern on November 10, 2021 and ended at approximately 10:30 PM Eastern on the same day.

28. After offering the Debtor's Assets in lots, the Debtor conducted an auction of all of its Assets together. There was spirited bidding for the Debtor's Assets.

29. After a number of rounds of the Auction and after consultation with its professionals and Consultation Parties, the Debtor, using its reasonable business judgement and rights afforded under the bid procedures, altered its procedures to call for sealed bids, which were opened simultaneously on the record of the proceedings, and in the presence of at least one representative from the remaining bidding participants. The physical sealed Bids, now opened, were retained by Obermayer Rebmann Maxwell and Hippel, LLP.

30. I personally opened each envelope. After reviewing the sealed bids, and sharing them with Edmond George and Michael Vagnoni, and representatives from each of the Consultation Parties, it was clear that VV9000 LLC was the highest and best bidder.

31. The sealed bid of VV 9000, LLC was determined to be the highest and best bid for the Debtor's assets, with a cash bid of \$32,000,000.00 (the "**Successful Bidder**").

32. In my view, the result is a very respectable number obtained for the Debtor's Assets. The second highest bidder was designated as the Backup Bidder, in accordance with Bid Procedures Order. The Purchase price is well in excess of the DIP Lender's post-petition liens by approximately \$18,000,000.00.

33. The Auction was open, lively, and resulted in a substantial increase to the Stalking Horse Bid.. I believe the Debtor obtained the maximum value for its Assets under the circumstances.

34. I further believe that the Successful Bidder presented the best economic and qualitative offer because the purchaser is the owner of the adjoining property at 8600 River Road, and issues of indemnity, easements, insurance, and environmental obligations are no

longer a concern, as the Successful Bidder is well aware of the conditions on the Real Property, and will upon closing own both properties.

35. It is my understanding, based upon the representations made by each of the bidding parties, including the Successful Bidder, that all of the bidding parties acted in good faith during the bidding process and they (the bidding parties) did not engage in collusion or improper behavior.

36. Further, the Successful Bidder recognized that (i) the Debtor was free to deal with any other party interested in purchasing the Purchased Assets; (ii) the Successful Bidder had no role in precipitating the Debtor's Chapter 11 filing; (iii) the Successful Bidder has not violated section 363(n) of the Bankruptcy Code by any action or inaction; (iv) no common identity of directors, managers, officers or controlling stockholders exist between the Successful Bidder, on the one hand, and Debtor, on the other hand; (v) the Successful Bidder complied with the Bid Procedures and all provisions of the Bid Procedures Order and Amended Bid Procedures Order; and (vi) all payments to be made, and all other material agreements or arrangements entered into or to be entered into by the Buyer in connection with the Sale Transaction have been disclosed.

37. I therefore believe the Successful Bidder is a purchaser entitled to the protections of 363 (m).

38. Further the Successful Bidder is entitled to receive the Assets free and clear of all liens, claims and encumbrances, including any disputed junior liens pursuant to Section 363(f). The free and clear provisions are part of the Sale Motion prayer for relief and a condition in the Successful Bidder's APA.

39. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: November 12, 2021

/s/ Justin Magner
Justin Magner
Director, Special Situations
and Restructuring
Cowen and Company, LLC