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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In Re:

NEVADA COPPER, INC.,

Debtor.

Case No. 24-50566-hlb

Chapter 11

Jointly Administered with:

Case No. 24-50567-hlb

Case No. 24-50568-hlb

Case No. 24-50569-hlb

Case No. 24-50570-hlb

Case No. 24-50571-hlb

**RAM ENTERPRISE, INC.'S LIMITED
 OBJECTION TO APPROVAL OF SALE**

ECF Nos. 510, 660

RAM Enterprise, Inc. ("RAM"), secured creditor in the above-captioned jointly administered Chapter 11 bankruptcy cases (the "Bankruptcy Case") of Nevada Copper, Inc. ("NV Inc."), Nevada Copper Corp., NC Ditch Company LLC, NC Farms LLC, Lion Iron Corp., and 0607792 B.C. Ltd. (collectively, the "Debtors"), hereby objects, on a limited basis, to approval of the proposed sale as stated in the *Notice of Cancellation of Auction and Designation of Stalking Horse Bidder as Successful Bidder* (the "Sale Notice") [ECF No. 660].¹ While not entirely clear,

¹ The Sale Notice (as well as the Sale Procedures Order, as defined below) provide that objections to the

it appears that the terms of the proposed sale are set forth in the unexecuted *Asset Purchase Agreement* (“APA”) attached as Exhibit 2 to the *Notice of Designation of Stalking Horse Bidder* (the “Stalking Horse Notice”) [ECF No. 510], which RAM objects to, on a limited basis, as well. This Limited Objection is supported by the papers on file with the Court, any argument that the Court may entertain, and the following memorandum of points and authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Unfortunately, there is a dearth of information as to how, and in what amount, Debtors propose to pay RAM if the proposed asset sale to Southwest Critical Materials LLC (the “Stalking Horse Bidder”) is approved. RAM has three (3) executory contracts with NV Inc. RAM also has a mechanic’s lien against NV Inc.’s property. While initially it appeared that Debtors were going to assume and assign RAM’s three (3) executory contracts for the full cure amount, it is unclear now whether the Stalking Horse Bidder intends to continue with Debtors’ plan. RAM requires clarity on this, as well as adequate assurance of the Stalking Horse Bidder’s ability to timely cure, by paying the full cure amount and perform in the future. To the extent RAM’s three (3) executory contracts will not be assumed and assigned, RAM still holds a valid and perfected mechanic’s lien that must be satisfied. It is not evident from the APA what will happen to RAM’s mechanic’s lien upon the proposed sale. In short, RAM seeks additional information about the impact of the proposed sale on its executory contracts and its secured claim, including treatment and payment. RAM expressly reserves all objections to the proposed sale until such information is provided.

II. FACTUAL BACKGROUND

A. The Contracts

On or about July 1, 2023, RAM entered into an agreement with NV Inc. whereby RAM agreed to furnish certain labor, materials, and equipment for the installation of a coarse ore bin located at NV Inc.’s Pumpkin Hollow Mine (the “PG30000068 Contract”).

proposed sale are due by September 19, 2024 at 12:00 p.m. PST.

On or about September 1, 2023, RAM entered into a supplemental agreement with NV Inc. whereby RAM agreed to furnish additional labor, materials, and equipment relating to electrical and instrumentation works located at NV Inc.'s Pumpkin Hollow Mine covering GEHO pumps (the "PG0000086 Contract").

On or about September 19, 2023, RAM entered into another supplemental agreement with NV Inc. whereby RAM agreed to furnish additional labor, materials, and equipment relating to the completion of civil and mechanical works affiliated with the GEHO pumps located at NV Inc.'s Pumpkin Hollow Mine (the "PG30000087 Contract"). The PG30000068 Contract, the PG0000086 Contract, and the PG30000087 Contract are collectively referred to herein as the "Contracts."

B. NV Inc.'s Defaults and RAM's Mechanic's Lien

Despite RAM fully performing the work required under the Contracts, NV Inc. failed to pay RAM for its work furnished to the Pumpkin Hollow Mine (collectively, the "Outstanding Balance"). RAM demanded payment of the Outstanding Balance for the work furnished for NV Inc.'s Pumpkin Hollow Mine, but the Outstanding Balance remains unpaid. As a result, pre-petition, RAM caused a notice of lien to be recorded on April 23, 2024, in the Official Records of Lyon County, Nevada, as Document No. 6870956 (the "Lien").

The Lien specifies that:

- a. The amount of the original contract is \$5,859,479.73;
- b. The total amount of all additional or changed work, materials, and equipment, if any, is \$1,106,226.88;
- c. The total amount of all payments received to date is \$3,039,308.32; and
- d. The amount of the lien, after deducting all just credits and offsets, is \$3,926,398.29.²

The Lien attached to NV Inc.'s real property and improvements located at (including all easements, rights-of-way, common areas, and appurtenances thereto, and surrounding space as

² RAM is also entitled to accrued interest and attorneys' fees and costs.

may be required for the convenient use and occupation of the property upon which RAM and others caused or allowed to be constructed certain improvements):

Assessor Parcel Number: 001-661-02

Common Address: 61 E. Pursel Lane
Mason Valley, Nevada

County Assessor Description: As described in that Grant, Bargain and Sale Deed recorded in Lyon County, Nevada as Document No. 542178 on October 12, 2015

AND

Assessor Parcel Number: 001-662-04; together with all of NV Inc.'s (lessee) interest in that certain lease evidenced by that Memorandum of Lease dated May 4, 2006 and recorded as Document No. # 381887

Common Address: 85 E. Pursel Lane
Mason Valley, NV

County Assessor Description: As described in that Special Warranty Deed recorded in Lyon County, Nevada as Document No. 317588 on April 5, 2004

RAM timely and properly served notice of its Lien on all required parties.

As of September 16, 2024, NV Inc. is indebted to RAM in the amount of no less than \$4,272,759.33, which is comprised of: (i) \$3,926,398.29 in principal, (ii) \$125,837.30 in reasonable attorneys' fees and costs related to the Lien pursuant to, among other things, the terms of the Contracts and N.R.S. § 108.237, and (iii) \$220,523.74 in accrued interest related to the Lien.³ RAM is also entitled to all reasonable post-petition attorneys' fees and costs and accrued and accruing interest pursuant to, among other things, the terms of the Contract and N.R.S. § 108.237.

³ Pursuant to N.R.S. § 108.237, so far, pre-petition interest has accrued from April 5, 2024 (the date demand was made) until September 16, 2024 (the date of calculation), a total of 164 days, at the prime rate of 8.5% (as of July 1, 2024 as published by the Nevada Department of Business and Industry Financial Institutions) plus 4% for a total of 12.5% (\$3,926,398.29 x 12.5% = \$490,799.79 / 365 days = \$1,344.66 x 164 days = \$220,523.74).

C. The Bankruptcy Proceedings

1. The Petitions

On June 10, 2024, Debtors filed for Chapter 11 bankruptcy, initiating Bankruptcy Case Nos. 24-50566-hlb, 24-50567-hlb, 24-50568-hlb, 24-50569-hlb, 24-50570-hlb, 24-50571-hlb (which were subsequently consolidated).

2. DIP Financing

On June 10, 2024, Debtors filed *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Grant Liens, Including Senior Secured Priming Liens, and Superpriority administrative Expense Claims, and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to Certain Prepetition Secured Parties; (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief* (the “DIP Financing Motion”) [ECF No. 14], seeking, in part, debtor-in-possession financing.

On July 15, 2024, the Court entered its *Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Grant Liens, Including Senior Secured Priming Liens and Superpriority administrative Expense Claims, and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to Certain Prepetition Secured Parties; (III) Modifying the Automatic Stay; and (IV) Granting Related Relief* (the “DIP Financing Order”) [ECF No. 385], granting debtor-in-possession financing, among other things, on a final basis. As part of the DIP Financing Order, Debtors and RAM negotiated, as subsequently ordered by the Court, that “the DIP Secured Parties shall not recover from any proceeds resulting from the sale or transfer of the RAM Collateral unless and until the RAM Liens⁴ have been satisfied in full.” [ECF No. 385, p. 27].

3. The Sale Procedures

On June 20, 2024, Debtors filed *Debtors' Motion for Entry of an Order (I) (A) Approving the Auction and Bidding Procedures, (B) Approving Stalking Horse Bid Protections, (C) Scheduling Certain Dates and Deadlines with Respect Thereto and an Auction, (D) Approving the Form and Manner of Notice Thereof, (E) Approving the Form APA, and (II) (A) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases, (B)*

⁴ Defined as “the \$3,926,398.29 million prepetition liens of Ram Enterprise, Inc.” [ECF No. 385, p. 27].

1 *Authorizing the Assumption and Assignment of Assumed Contracts (C) Authorizing the Sale of*
 2 *Assets and (III) Granting Related Relief* (the “Sale Procedures Motion”) [ECF No. 145], seeking,
 3 among other things, this Court’s approval for the procedure for selling of substantially all of their
 4 assets, including the assumption and assignment of certain of Debtors’ executory contracts.

5 On July 22, 2024, the Court entered its *Order (I) Approving Auction and Bidding,*
 6 *Noticing, and Assumption and Assignment Procedures; (II) Scheduling Certain Dates and*
 7 *Deadlines With Respect Thereto; (III) Approving Form Notice to be Provided to Interested*
 8 *Parties; and (IV) Granting Related Relief* (the “Sale Procedures Order”) [ECF No. 434],
 9 approving certain sale and assumption and assignment procedures.

10 4. *Assumption and Assignment*

11 Pursuant to the Sale Procedures Order, Debtors filed their *Notice of Proposed Assumption*
 12 *and Assignment of Certain Executory Contracts and Unexpired Leases* (the “Cure Notice”) [ECF
 13 No. 469] on July 30, 2024.⁵ The Cure Notice provides that “Debtors **may** assume and assign” the
 14 following contracts with RAM to the successful purchaser of Debtors’ assets (the “RAM
 15 Listings”):

No.	Debtor	Counterparty	Description	Contract Cure (\$)
156	Nevada Copper, Inc.	RAM Enterprise, Inc.	04/04/2022 Electrical Services Agreement	\$0.00
157	Nevada Copper, Inc.	RAM Enterprise, Inc.	07/26/2023 Concrete Truck Block Revision Agreement	\$0.00
158	Nevada Copper, Inc.	RAM Enterprise, Inc.	09/01/2023 Services Agreement (#PG30000086)	\$3,933,326.65

21 On August 20, 2024, RAM filed *RAM Enterprise, Inc.’s Limited Objection to Notice of*
 22 *Proposed Assumption and Assignment of Certain Executory Contracts and Unexpired Leases* (the
 23 “Cure Objection”) [ECF No. 559], pursuant to which RAM stated it was not opposed to
 24 assumption and assignment of its contracts, but rather to how the contracts were designated and
 25 the amount of the cure payment (which as of August 15, 2024, was \$4,218,645.81).

26
 27
 28 ⁵ Debtors subsequently supplemented the Cure Notice, but no changes were made to the RAM Listings.

Subsequent to the filing of the Cure Objection, counsel for Debtors reached out to counsel for RAM agreeing to correct the designation of the contracts and increase the cure payment as set forth in the Cure Objection.

However, following such conversations, on September 10, 2024 (the day after the Stalking Horse Bidder was announced as the successful bidder), counsel for Debtors informed counsel for RAM that the Stalking Horse Bidder had not yet decided whether to assume RAM's executory contracts (and if so, in what cure amount the Stalking Horse Bidder intended to pay).

5. *The APA*

On August 9, 2024, Debtors filed the Stalking Horse Notice, attaching the unexecuted APA. [ECF No. 510].

The unexecuted APA provides that Debtors are selling to the Stalking Horse Bidder "the Purchased Assets free and clear of any and all Encumbrances, other than Permitted Encumbrances." [ECF No. 510, Ex. 2, § 2.1]. "Permitted Encumbrances" are defined in the APA to include "[l]iens of mechanics, materialmen, warehousemen, landlords, vendors and carriers and any similar Encumbrances arising by operation of Law which, in each instance, (i) arise in the Ordinary Course of Business, (ii) are not capable of being discharged or otherwise rendered ineffective against the Buyer and the Purchased Assets by the Sale Order, and (iii) are not material in nature or amount." [ECF No. 510, Ex. 2, § 1.1].⁶

On August 21, 2024, the Court entered the *Order Approving (I) Designation of the Stalking Horse Bidder and (II) the Proposed Bid Procedures* (the "Stalking Horse Order") (ECF No. 574). The unexecuted APA has not been approved.

III. OBJECTION

RAM objects to the proposed sale because, *inter alia*, (i) it is entirely unclear whether the Stalking Horse Bidder intends to assume RAM's three (3) executory contracts and, if so, pay what amount to cure and subject to what adequate assurance of future performance, and (ii) in the

⁶ The APA also defines "Excluded Liabilities" to include "the mechanics Liens disclosed in item 1 of Schedule 3.11(b)." [ECF No. 510, Ex. 2, § 1.1]. However, there is no Schedule 3.11(b) attached to the unexecuted APA.

event RAM's executory contracts are not all assumed, what will happen to RAM's mechanic's lien and how such secured claim will be satisfied.

A. RAM Undisputedly Has Executory Contracts, and It Is Unclear Whether the Stalking Horse Bidder Is Assuming Such Executory Contracts

As noted above, NV Inc. has three (3) executory contracts with RAM: (i) Service Agreement dated September 1, 2023 (#PG30000086), (ii) Service Agreement dated July 1, 2023 (#PG30000068), and (iii) Service Agreement dated September 19, 2023 (#PG30000087). The amount owed on all contracts as of September 16, 2024 is \$4,272,759.33 (with interest and attorneys' fees and costs continuing to accrue). Given that Debtors identified RAM as a party with three (3) executory contracts with a cure amount close to what RAM claims (a difference of less than \$400,000.00) [ECF No. 469], coupled with RAM counsel's and Debtors' counsel subsequent communications agreeing to the designation of the contracts and cure amount, there is no dispute that RAM has three (3) executory contracts subject to curing.

However, what remains unclear, in light of communications on September 10, 2024, is whether the Stalking Horse Bidder intends to carry through with Debtors' plan and assume the three (3) executory contracts for the full cure amount (\$4,272,759.33 as of September 16, 2024, plus accruing interest and attorneys' fees and costs). When a contract is assumed under 11 U.S.C. § 365, the non-debtor, third-party to that contract must be "made whole at the time of the debtor's assumption of the contract." *In re Entertainment, Inc.*, 223 B.R. 141, 151 (Bankr. N.D. Ill. 1998); *see also In re Diamond Head Emporium, Inc.*, 69 B.R. 487, 495 (Bankr. D. Haw. 1987). Accordingly, in the event of assumption, the Stalking Horse Bidder must pay the full cure amount based upon the actual amount that is due on the date that the Contracts are assumed and assigned. 11 U.S.C. § 365(b)(1). The Stalking Horse Bidder must also provide adequate assurance of its ability to timely cure. *Id.* RAM seeks clarity as to whether the Stalking Horse Bidder will assume RAM's three (3) executory contracts, and if so, for the full cure amount (\$4,272,759.33 as of September 16, 2024, plus accruing interest and attorneys' fees and costs), timely received after closure of the proposed sale, in conjunction with adequate assurance of timely payment.

B. RAM Undisputedly Has a Mechanic's Lien, and It Is Unclear Whether the Secured Claim Will Be Paid From the Proposed Sale

Even if the Stalking Horse Bidder decides not to assume RAM's three (3) executory contracts, RAM nonetheless holds a valid and perfected mechanic's lien that must be satisfied.

The unexecuted APA is very hazy as to what happens to mechanic's liens, such as RAM's, following the proposed sale. The unexecuted APA provides that Debtors are selling to the Stalking Horse Bidder "the Purchased Assets free and clear of any and all Encumbrances, other than Permitted Encumbrances." [ECF No. 510, Ex. 2, § 2.1]. "Permitted Encumbrances" are defined in the APA to include "[l]iens of mechanics, materialmen, warehousemen, landlords, vendors and carriers and any similar Encumbrances arising by operation of Law which, in each instance, (i) arise in the Ordinary Course of Business, (ii) are not capable of being discharged or otherwise rendered ineffective against the Buyer and the Purchased Assets by the Sale Order, and (iii) are not material in nature or amount." [ECF No. 510, Ex. 2, § 1.1]. While RAM clearly has a "lien[] of mechanics," that arose in the ordinary course of Debtors' business, there is more uncertainty surrounding the rest of the definition of "Permitted Encumbrances." For instance, can the order approving the sale render RAM's mechanic's lien ineffective and thus exclude it as a "Permitted Encumbrance" that survives the sale? Is RAM's \$4,272,759.33 mechanic's lien (as of September 16, 2024, plus accruing interest and attorneys' fees and costs) considered material in nature or amount so as to fall outside of a "Permitted Encumbrance?"

Moreover, the APA does not address how encumbrances will be paid. Will holders of encumbrances be paid at closing directly from the proceeds of sale? Will the sale proceeds first go to Debtors and any encumbrances attach to the sale proceeds with the same validity and priority to be distributed later (and if so, when and by what process)? Of note, Debtors and RAM specifically negotiated, as subsequently ordered by the Court, that "the DIP Secured Parties shall not recover from any proceeds resulting from the sale or transfer of the RAM Collateral unless and until the RAM Liens⁷ have been satisfied in full." [ECF No. 385, p. 27]. Thus, RAM must

⁷ Defined as "the \$3,926,398.29 million prepetition liens of Ram Enterprise, Inc." [ECF No. 385, p. 27].

1 be paid on account of its mechanic's lien before the sale proceeds are paid to the debtor-in-
2 possession lender.

3 **IV. CONCLUSION**

4 For the foregoing reasons, RAM respectfully requests clarity as to whether: (a) RAM's
5 three (3) contracts will be assumed by the Stalking Horse Bidder and RAM paid the full cure
6 amount; and (b) if RAM's three (3) contracts will not be assumed by the Stalking Horse Bidder,
7 whether: (i) RAM's mechanic's lien is a "Permitted Encumbrance," and thus RAM's mechanic's
8 lien will be unaffected by the sale; or (ii) RAM's mechanic's lien be paid from the proceeds of
9 the proposed sale.

10 RAM objects to the proposed sale in the event that: (i) RAM's three (3) executory
11 contracts are not all assumed by the Stalking Horse Bidder and RAM paid the full cure amount;
12 or (ii) RAM's secured claim on account of its mechanic's lien is removed from the property
13 securing its claim and RAM is not fully paid from the proceeds of the proposed sale.

14 RESPECTFULLY SUBMITTED this 18th day of September, 2024.

15 SNELL & WILMER L.L.P.

16 /s/ Nathan G. Kanute

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