

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:) Chapter 11
)
HARTFORD COMPUTER HARDWARE,) Case No. 11-49744 (PSH)
INC., *et al.*,¹) (Joint Administration Pending)
)
Debtors.) Hon. Pamela S. Hollis

AMENDMENTS TO PROPOSED ORDER

¹ The Debtors are Hartford Computer Hardware, Inc. (FEIN 27-4297525), Nexicore Services, LLC (FEIN 03-0489686), Hartford Computer Group, Inc. (FEIN 36-2973523), and Hartford Computer Government, Inc (FEIN 20-0845960).



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ORDER AUTHORIZING THE SALE OF PROPERTY OF THE ESTATES UNDER BANKRUPTCY CODE § 363 AND THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND LEASES UNDER BANKRUPTCY CODE § 365

This matter ~~coming comes~~ before the Court for entry of a final order on the ~~Motion For Order Authorizing The Sale Of Property Of The Estates Under Bankruptcy Code § 363 And The Debtors' Motion Pursuant to 11 U.S.C. §§ 105(a), 363, 365 and Fed. R. Bankr. P. 2002, 6004, 6006 for (I) Entry of an Order (A) Approving Bidding Procedures; (B) Granting Certain Bid Protections; (C) Approving Form and Manner of Sale Notices; (D) Setting Sale Hearing Date in Connection With Sale of Substantially All of Debtors' Assets; and (II) Entry of an Order (A) Approving the Sale of Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; (B) Authorizing the Assumption And Assignment ~~Of of Certain~~ Executory Contracts And Leases To Purchaser Under Bankruptcy Code § 365 (the "Motion")² and Unexpired Leases; (C) the Assumption of Certain Liabilities; and (D) Granting Certain Related Relief (the "Motion")²~~; the Court having reviewed the Motion, the Declaration of Brian Mittman in Support of the Sale Motion, and the Declaration of Michael Levy in Support of First Day Relief the Sale Motion; the Court having found that (a) the Court has jurisdiction over this matter pursuant to 28

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² Capitalized terms not defined herein shall have the meaning given to them in the Motion.

U.S.C. §§ 157 and 1334, (b) venue is proper in this district pursuant to 28 U.S.C. § 1408 and 1409, (c) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (d) notice of the Motion ~~having been~~^{is} sufficient under the circumstances; and the Court having determined that the legal and factual ~~basis~~^{bases} set forth in the Motion establish just cause for the relief granted ~~herein~~^{in this order};

THE COURT FINDS AND CONCLUDES that:

1. In accordance with this Court's *Order (i) Approving Bidding Procedures, (ii) Granting Bid Protections, (iii) Approving Form and Manner of Sale Notices, and (iv) Setting Sale Hearing Date in Connection With Sale of Substantially All of the Debtors' Assets* ([Docket No. 128](#)) (the "Sale Procedures Order"), the Debtors served notice of, among other things, the Motion, the proposed sale of the Acquired Assets, the proposed assumption and assignment of the Contracts and Leases, the proposed Cure Amounts, the opportunity to submit Competing Bids,³ the deadline to object to the Court's entry of an order granting the Motion, and the date and time of the final hearing on the Motion on all parties required to receive such notice under the Sale Procedures Order. ~~See Certificate of Service [DE # _____], including, without limitation, all creditors and all counterparties to the Contracts and Leases. (See Affidavit of Service filed on February 9, 2012, Docket No. 158; Affidavit of Service filed on February 13, 2012, Docket No. 168.) In addition, pursuant to the Sale Procedures Order, the Debtors caused to be published a notice of the sale, the deadline to object to the Court's entry of an order granting the Motion, and the date and time of the final hearing on the Motion in the national edition of *The Wall Street Journal*. (See Affidavit of Publication of Notice of Sale in *The Wall Street Journal* filed on~~

³ ~~Capitalized terms used but not defined in this Order have the meanings given to them in the Sale Procedures Order or the Motion.~~

[February 9, 2012, Docket No. 160.](#)) Such notice was adequate under Bankruptcy Rules 2002, 6004, and 6006 and the circumstances of these cases; no additional notice is necessary.

2. The Debtors received one Qualified ~~Bids from the following entities (together, the “Qualified Bidders”)~~Bid, which was made by the stalking-horse bidders Avnet, Inc. and Avnet International (Canada) Ltd. (collectively, the “Purchaser”) pursuant to the Asset Purchase Agreement dated December 12, 2011 (the “Agreement”).

~~a. Entity #1~~

~~b. Entity #2~~

3. ~~The Debtors conducted the Auction among the Purchaser and the~~Having received no Qualified Bids from any Qualified Bidders by the deadlines set forth ~~in accordance with~~ the Sale Procedures Order, ~~and the Debtors identified the Purchaser as the highest and best bid for the Acquired Assets. The Auction provided all entities a full and fair opportunity to make a higher or otherwise better offer to purchase the Acquired Assets under the circumstances. other~~than the Purchaser’s Qualified Bid, the Debtors cancelled the Auction.

4. The Court considered the Motion and conducted a hearing (the “Sale Hearing”) on February ~~17, 2012~~28, 2012, at which statements of ~~counse~~counsel for the Debtors, any objectors, the Official Committee of Unsecured Creditors (the “Committee”), Delaware Street Capital Master Fund, L.P. (“Delaware Street”), and the Purchaser were heard.

5. The Debtor has identified, and the Court recognizes, the Purchaser as the prevailing bidder for the Acquired Assets in accordance with the Sale Procedures Order. The Purchaser’s bid is the highest and best bid for the Acquired Assets. With the entry of this Order, the Purchaser’s bid has no material unsatisfied conditions, is not subject to significant execution risk, and ~~will~~therefore should be able to close ~~immediately on or shortly after entry of this Order~~pursuant to the terms of the Agreement.

6. The transactions contemplated in the Agreement and this Order (the “Transaction”), including an immediate sale of the Acquired Assets to the Purchaser and the Debtors’ assumption and assignment to the Purchaser of the Assumed Contracts, are in the best interests of the estates and creditors.

7. The Debtors have demonstrated sufficient and sound business justifications and compelling circumstances for the sale of the Acquired Assets other than in the ordinary course of the Debtors’ business under Bankruptcy Code § 363(b) before, and outside of, a plan of reorganization because, among other things, the immediate consummation of the Transaction with the Purchaser is necessary and appropriate to maximize the value of the estates. Entry of an order in the form and substance of this Order is a necessary condition precedent to the Purchaser’s consummation of the Transaction.

8. The Purchaser and the Debtors negotiated the sale of the Acquired Assets without collusion, in good faith, and at arm’s length. The Purchaser is, therefore, entitled to the protections afforded under Bankruptcy Code § 363(m). There was no agreement among the Purchaser, any of the Qualified Bidders, and any other potential bidder for the Acquired Assets, to control the price to be paid for the Acquired Assets under the Motion. Accordingly, nothing would cause the sale authorized by this Order to be avoided under Bankruptcy Code § 363(n).

9. The consideration to be paid by the Purchaser constitutes reasonably equivalent value or fair consideration (as those terms are defined in the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, and Bankruptcy Code § 548), and fair consideration under the Bankruptcy Code, under the laws of the United States and any state, territory, or possession, and, ~~in accordance with the Initial Recognition Order entered by the~~ to the extent provided for in any orders of the Ontario Superior Court of Justice (Commercial List) (the “Ontario Court”), ~~the~~

~~Interim Initial Order entered by the Ontario Court and the Supplemental Order entered by the Ontario Court (together with the Initial Recognition Order, the Interim Initial Order, recognizing this Order (the “Recognition Orders”)), under the laws of Canada and any of its provinces, territories, or possessions.~~

10. The Debtors are the sole, lawful owners of the Acquired Assets. The transfer of the Acquired Assets to the Purchaser under the Agreement will be a legal, valid, and effective transfer of the Acquired Assets, vesting the Purchaser with all title to the Acquired Assets free and clear of all liens, claims (as defined in Bankruptcy Code § 101(5)), encumbrances, obligations, liabilities, contractual commitments, or interests of any kind (collectively, the “Interests”), including without limitation (i) ~~an~~any Interest that purports to give a party a right to forfeit, modify, or terminate the Debtors’ interests in the Acquired Assets, or any similar right, and (ii) ~~an~~any Interest relating to taxes arising under or out of, in connection with, or in any way relating to the operation of the Debtors’ business before the closing of the sale authorized in this Order. All Interests shall attach to the proceeds, including, without limitation, all elements of the “Purchase Price” as defined in Section 3.2(a) of the Agreement, attributable to the property against or in which such Interests are asserted, subject to the terms of such Interests, with the same validity and in the same priority that such Interests now have against the Acquired Assets or their proceeds, subject to any rights, claims, and defenses the Debtors or their estates may possess with respect to such Interests, including any ultimately successful “Challenge” (as that term is defined in the Final Order (I) Authorizing the Debtors to Obtain Post-Petition Financing Pursuant to 11 U.S.C. § 364, (II) Authorizing the Use of Cash Collateral Pursuant to 11 U.S.C. § 363, (III) Granting Adequate Protection to the Prepetition Secured Lender Pursuant to 11 U.S.C. §§ 361 and 363, and (IV) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001,

hereinafter the “Final DIP Financing Order”) [Dkt. No. 137] asserted by any party ultimately determined to have the requisite standing.

11. The Debtors may sell the Acquired Assets free and clear of all Interests because, with respect to each Interest, one or more of the standards set forth in Bankruptcy Code § 363(f)(1)-(5) is satisfied. Each entity asserting an Interest in the Acquired Assets: (i) has, subject to the terms and conditions of this Order, consented or is deemed to have consented to the sale of the Acquired Assets; (ii) has an Interest that is subject to bona fide dispute; (iii) could be compelled in a legal or equitable proceeding to accept money satisfaction of its Interest; or (iv) otherwise falls within the provisions of Bankruptcy Code § 363(f). Those holders of Interests who did not timely object to the Motion are deemed, subject to the terms of this Order, to have consented under Bankruptcy Code § 363(f)(2). All holders of Interests are adequately protected by having their Interests attach to the proceeds ultimately attributable to the property against or in which such Interests are asserted.

12. The Debtors’ assumption and assignment to the Purchaser of the Assumed Contracts is integral to the Agreement and is in the best interests of the Debtors and their estates, creditors, and all other parties in interest, and represents the reasonable exercise of the Debtors’ business judgment. The Debtors or the Purchaser have, to the extent necessary, cured or provided adequate assurance of cure of any default existing before the date of this Order with respect to the Assumed Contracts within the meaning of Bankruptcy Code § 365(b)(1)(A) and (f)(2)(A). The Purchaser’s promise to perform the obligations under the Assumed Contracts after closing constitutes adequate assurance of future performance within the meaning of Bankruptcy Code § 365(b)(1)(C), (b)(3) (to the extent applicable), and (f)(2)(B).

13. The Transaction may include the transfer of Personally Identifiable Information, as defined in Bankruptcy Code § 101(41A). No Consumer Privacy Ombudsman need be appointed because the Purchaser has agreed to adhere to any privacy policies applying to the Debtors.

14. The objections filed by any objectors have been resolved or withdrawn based on the provisions of this Order to which all objectors, the Purchaser, and the Debtors stipulate as indicated by their ~~counsels'~~respective signatures of counsel below.

15. Good cause appears for granting the relief requested in the Motion.

IT IS HEREBY ORDERED as follows:

A. The Motion is GRANTED as provided in this Order.

B. All objections to the Motion or the relief requested ~~therein~~in the Motion that have not been made, withdrawn, waived, or settled, and all reservations of rights included ~~therein,~~ hereby any such objection, are overruled on the merits.

C. The Agreement and the Transaction are APPROVED as provided in this Order. The Debtors are authorized and directed to: (a) execute the Agreement, along with any additional documents that may be reasonably necessary or appropriate to implement the Agreement but do not materially change the its terms; (b) consummate the Transaction; and (c) take any action reasonably necessary to implement the Transaction in a manner not inconsistent with this Order. The Agreement and any related agreements and documents may be modified by the parties to it, in writing and in accordance with its terms, without further order of this Court if the modification does not materially and adversely affect the estates, and upon three (3) business days' prior written notice to the Committee and Delaware Street.

D. The stays of this Order under Bankruptcy Rules 6004(h) and 6006(d) are waived. This Order is effective and enforceable immediately on entry.

E. Except as expressly provided in the Agreement or this Order, the sale of the Acquired Assets to the Purchaser is free and clear of all Interests under Bankruptcy Code § 363(f). All Interests are released, terminated, and discharged as to the Acquired Assets and the Purchaser (and its successors and assigns). Any Interest, if valid, legal, and enforceable, ~~attaches~~shall attach to, and ~~is to~~ be satisfied, if at all, from, the proceeds of the sale, including, without limitation, all elements of the "Purchase Price" as set forth in Section 3.2(a) of the Agreement, in the same order and priority as the Interest had in the Acquired Assets before the sale.

F. The Transaction ~~and~~, the Agreement, and all of its related documents constitute a duly authorized, legally valid, and binding transfer, specifically performable and enforceable against, and not subject to rejection or avoidance by, the Debtors or any representative of the Debtors' estates under any chapter of the Bankruptcy Code. Every federal, state, and local governmental agency or department is directed to accept any document or instrument necessary and appropriate to consummate the transactions contemplated by this Order. The Transaction may not be avoided under Bankruptcy Code § ~~365~~363(n).

G. The purchase of the Acquired Assets is undertaken by the Purchaser in good faith, as that term is used in Bankruptcy Code §363(m). Accordingly, the reversal or modification on appeal of the authorization provided in this Order to consummate the Transaction will not affect the validity of the sale of the Acquired Assets to the Purchaser, unless this Order is duly stayed pending such an appeal. The Purchaser, as a purchaser in good faith of the Acquired Assets, is entitled to all protections afforded under Bankruptcy Code § 363(m).

H. Under no circumstance may the Purchaser or any of its affiliates be deemed a successor of any one of the Debtors for any Interest in the Acquired Assets. Any person holding an Interest in any component of the Acquired Assets is permanently enjoined from asserting, prosecuting, or otherwise pursuing its Interest against the Purchaser, its property, its affiliates, its successors, its assignees, its employees, its agents, or against the Acquired Assets with respect to that Interest. The provisions of this paragraph and all other provisions of this Order are intended to have effect in all federal, state, and local jurisdictions in the United States and, in accordance with the Recognition Orders, in all federal, provincial, and local jurisdictions in Canada.

I. On and after the closing of the Transaction, no holder of an Interest or any claim against any Debtor or its estate may interfere with Purchaser's title to, or use and enjoyment of, the Acquired Assets. All entities, including without limitation the Debtors, their present and former employees, administrative agencies, governmental tax and regulatory authorities, secretaries of state, federal, state, and local officials, lenders, contract parties, bidders, lessors, warehousemen, customs brokers, freight forwarders, carriers, and other parties in possession of any Acquired Assets at any time, all creditors, and all other persons holding Interests of any kind arising under or out of, in connection with, or in any way relating to, the Debtors, the Acquired Assets, the operation of the Debtors' business before the closing of the Transaction, or with respect to any Interests arising out of or related to the Transaction, are forever barred and permanently enjoined from commencing, prosecuting, or continuing in any manner any action or other proceeding of any kind against the Purchaser, its property, its successors and assigns, its employees and agents, its affiliates, or the Acquired Assets. Following the Closing Date, no holder of an Interest in the Debtors may interfere in any way with the Purchaser's title to or use

and enjoyment of the Acquired Assets based on or related to such Interest, or any actions that the Debtors may take in these cases.

J. Any entity in possession of or control over any component of the Acquired Assets must surrender such possession or control either to the Debtors before the Transaction's closing or the Purchaser no later than the Transaction's closing.

K. The Debtors are authorized to assume and assign to the Purchaser the Assumed Contracts effective as of the entry of this Order. Each counterparty to an Assumed Contract is forever barred and enjoined from asserting against the Debtors or the Purchaser, or their respective property, any assignment fee, default, breach, claim, pecuniary loss, liability, or obligation arising under or related to the Assumed Contracts existing as of the closing of the Transaction. With respect to the Transaction and the assignment of the Assumed Contracts to the Purchaser as authorized in this Order, any provision in any ~~of~~ Assumed Contract that prohibits or conditions the assignment of such Assumed Contract or allows a party to such Assumed Contract to terminate, recapture, impose any penalty, or modify any term on the assignment of such Assumed Contract constitutes an unenforceable anti-assignment provision and is void.

L. If any license or permit necessary for the operation of the acquired business is determined not to be an executory contract assumable and assignable under Bankruptcy Code § 365, the Purchaser must apply for and obtain any necessary license or permit promptly after the Transaction's closing. The Debtors' licenses or permits must remain in place for the Purchaser's benefit until the Purchaser obtains all its necessary licenses and permits.

M. ~~In~~Except as provided in paragraph N below, in accordance with the Agreement, the ~~Debtors, at the~~Purchaser's request, must pay to any counter-party to an Assumed Contract

any Cure Amount identified on Exhibit 1 to the Assumption and Cure Notice for that Assumed Contract to cure all monetary defaults and breaches under that Assumed Contract required under Bankruptcy Code § 365(b). The payment of any applicable Cure Amount (a) effects a cure of all defaults existing under the applicable Assumed Contract as of the Transaction's closing, (b) compensates any counter-party to such Assumed Contract for any actual pecuniary loss resulting from such default, and (c) together with the assignment of Assumed Contract to the Purchaser, constitutes adequate assurance of future performance of the Assumed Contract. Any counterparty to an Assumed Contract shall have no remaining claim against the Debtors on account of any alleged breaches under the Assumed Contract.

N. As set forth in the Stipulation and Order Regarding Procedures to Resolve Proposed Cure Amounts (the "Sony Stipulation") by and among the Debtors, Sony Electronics Inc., and Sony Service Company (collectively, "Sony"), in the event the disputes regarding the proposed cure amounts on Assumed Contracts to which Sony is a counterparty reflected in Exhibit "A" to the Sony Stipulation (the "Sony Assumed Contracts") are unresolved prior to the closing of the Transaction, the Sony Assumed Contracts shall be assumed and assigned to the Purchaser (unless the Purchaser provides written notice to the Debtors that it does not seek an assumption and assignment of the Sony Assumed Contracts) effective as of the closing of the Transaction, provided the Purchaser will pay into escrow at the closing the disputed portion of the cure amounts with respect to each Sony Assumed Contract as set forth in the Sony Stipulation (the "Escrowed Funds"), will pay the undisputed portion of the cure amounts with respect to each Sony Assumed Contract to Sony within two (2) business days after the closing, and will pay the disputed portion of the cure amounts with respect to each Sony Assumed

Contract from the Escrowed Funds within two (2) business days after a determination by agreement or Court order regarding the correct cure amount.

O. Upon the closing of the transactions contemplated by this Order and the Agreement, the Debtors are directed to pay a portion of the proceeds to Delaware Street to pay and indefeasibly satisfy the DIP Obligations, as that term is defined in the Final DIP Financing Order (including, without limitation, the DIP Obligations incurred under paragraph 6 thereof), upon three (3) business days' written notice to the Committee of the amount to be so paid; provided, that the Committee shall have no right to object to such repayment absent mathematical error. All remaining proceeds shall be retained by the Debtor pending further order of this Court.

P. ~~N.~~ Nothing in any chapter 11 plan confirmed in the Debtors' cases, any order confirming any such plan, or any other order in these cases (including any order entered after any conversion of these cases into cases under chapter 7) may alter, conflict with, or derogate from the provisions of the Agreement or this Order.

Q. ~~Q.~~ This Court retains jurisdiction to enforce and implement the terms and provisions of this Order and any agreements or instruments executed in connection with this Order, including without limitation jurisdiction to resolve any disputes arising under or related to this Order and to interpret, implement, and enforce this Order's provisions.

R. ~~P.~~The Purchaser, the Debtors, all holders of Interests, and any objectors are authorized and directed to enter into any agreement or take any action reasonably necessary or appropriate to consummate the Transaction, transfer title in the Acquired Assets to the Purchaser, and otherwise effect and implement the Agreement and the provisions of this Order.

Dated: _____, ~~2011~~2012
JUDGE

UNITED STATES BANKRUPTCY

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