

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

In re: § **Case No. 16-50778**
§
SANJEL (USA) INC., et al.,¹ § **(Chapter 15)**
Debtors in a foreign proceeding. §
§ **JOINTLY ADMINISTERED**
§

REPLY OF PRICEWATERHOUSECOOPERS INC., AS FOREIGN REPRESENTATIVE, AND THE CHAPTER 15 DEBTORS TO BONDHOLDER TRUSTEE’S OBJECTION TO MONITOR’S MOTION FOR AN ORDER (I) SPECIFICALLY RECOGNIZING CANADIAN COURT ORDER AUTHORIZING DEBTORS TO BORROW UNDER A POST-PETITION CREDIT FACILITY, (II) APPROVING LIENS ON ASSETS LOCATED IN THE TERRITORIAL JURISDICTION OF THE UNITED STATES AND (III) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES
[Replies to Docket No. 120]

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

PricewaterhouseCoopers Inc. (the “Monitor”), as Foreign Representative, and the Chapter 15 Debtors file this *Reply of PricewaterhouseCoopers Inc., as Foreign Representative, and the Chapter 15 Debtors to Bondholder Trustee’s Objection to Monitor’s Motion for An Order (I) Specifically Recognizing Canadian Court Order Authorizing Debtors to Borrow Under A Post-Petition Credit Facility, (II) Approving Liens on Assets Located in The Territorial Jurisdiction of The United States and (III) Granting Adequate Protection to Prepetition Secured Parties* (the “Post-Petition Financing Reply”) and would show:

¹ The debtors in these jointly administered Chapter 15 cases are as follows: Sanjel Corporation (“Sanjel Corp.”), Suretech Group Ltd. (“Suretech”), Sanjel Energy Services (USA) Inc. (“Sanjel Energy”), Sanjel (USA) Inc. (“SUSA”), Suretech Completions (USA) Inc. (“Suretech USA”), Sanjel Capital (USA) Inc. (“Sanjel Capital”), Terracor Group Ltd. (“Terracor Group”), Terracor (USA) Inc. (“Terracor USA”), Terracor Resources (USA) Inc. (“Terracor Resources”), Terracor Logistics (USA) Inc. (“Terracor Logistics”), and Sanjel Canada Ltd. (collectively, the “Chapter 15 Debtors”).



I. INTRODUCTION

1. On April 4, 2016, the Monitor and the Chapter 15 Debtors filed the *Motion For An Order (I) Specifically Recognizing Canadian Court Order Authorizing Debtors to Borrow Under A Post-Petition Credit Facility, (II) Approving Liens on Assets Located in The Territorial Jurisdiction of The United States and (III) Granting Adequate Protection to Prepetition Secured Parties* [Docket No. 13] (the “Post-Petition Financing Motion”)². On April 5, 2016, the Court considered, on an interim basis, the Post-Petition Financing Motion and entered the *Interim Order Granting the Motion for An Order (I) Specifically Recognizing Canadian Court Order Authorizing Debtors to Borrow Under A Post-Petition Credit Facility, (II) Approving Liens on Assets Located in The Territorial Jurisdiction of The United States and (III) Granting Adequate Protection to Prepetition Secured Parties* [Docket No. 42] (the “Interim Financing Order”). The Post-Petition Financing Motion is set for final hearing on April 26, 2016 at 10:30 a.m. (central) before the Court.

2. The *Bondholder Trustee’s Objection to Monitor’s Motion For An Order (I) Specifically Recognizing Canadian Court Order Authorizing Debtors to Borrow Under A Post-Petition Credit Facility, (II) Approving Liens on Assets Located in The Territorial Jurisdiction of The United States and (III) Granting Adequate Protection to Prepetition Secured Parties* [Docket No. 120] (the “Bondholder Trustee Objection”) has been filed by Nordic Trustee ASA, as the trustee on behalf of the holders of the Sanjel Corporation 7.5% Callable Bond Issue 2014/2019 (the “Bond Trustee”). The Bond Trustee objects to entry of a final order on the Post-Petition Financing Motion but, as demonstrated below, the Bond Trustee Objection is deficient

² Capitalized terms used but not otherwise defined herein are ascribed the same meanings as they are given in the *Post-Petition Financing Motion*.

both factually and legally and the Court should approve the Post-Petition Financing Motion. Indeed, the Bond Trustee Objection is instead an attempt by the Bond Trustee to inappropriately delay final approval of the Post-Petition Financing Motion, although there is no factual dispute that the Chapter 15 Debtors have a critical and essential need for the requested financing. Likewise, the Bond Trustee Objection does not set forth any legal justification under Section 364 of the Bankruptcy Code to deny the Post-Petition Financing Motion, as there is none, but rather is simply an attack on the proposed sales of certain of the Chapter 15 Debtors' assets, which will be considered in the future by the Court.

II. THE COURT SHOULD GRANT THE POST-PETITION FINANCING MOTION ON A FINAL BASIS AS THE FINANCING IS ABSOLUTELY NECESSARY FOR THE CHAPTER 15 DEBTORS CONTINUED OPERATIONS

3. As established at the Interim Hearing on the Post-Petition Financing Motion, the Chapter 15 Debtors require post-petition financing to be able to continue to operate their businesses. The Initial Cash Flow Forecast which was Exhibit M in the *Notice of Filing of Documents in Support of First Day Filings* (the "Notice") fully established that the Chapter 15 Debtors had insufficient funds to appropriately operate their businesses without the financing provided by the Post-Petition Facility. Without the Post-Petition Facility, the Debtors will simply run out of operating cash. *See*, Affidavit of Paul Crilly (the "Crilly Affidavit"), Exhibit F to the Notice at ¶¶ 137 and 139. Moreover, as set out in the *13 Week Consolidated Cash Flow Forecast* which is the Monitor's Exhibit 15 for the final hearing on the Post-Petition Financing Motion, the Chapter 15 Debtors will ultimately need to borrow approximately \$42 to \$43 million under the Post-Petition Facility to sustain on-going operations. Moreover, testimony of the Monitor and the Chapter 15 Debtors will show that Debtors are operating in a challenging environment, economically and operationally, as a continuing result of the problems experienced

by oil and gas service companies, as well as a result of the insolvency proceedings in which the Chapter 15 Debtors find themselves. Approval of the Post-Petition Facility is critical to assure customers and suppliers of the Chapter 15 Debtors of the Chapter 15 Debtors ability to continue operating in the normal course of business.

4. Moreover, the Post-Petition Facility represented the only feasible financing alternative available to the Chapter 15 Debtors. *See* Affidavit of Michael Genereux, Exhibit E to the Notice, at ¶ 7. Other offers for post-petition financing had inferior economic terms (such as higher fees and interest rates) and also did not provide the sufficient level of funding necessary to the Debtors' operations during their insolvency proceedings. Those proposals were also tied to unacceptable restructuring transactions. *Id.* at ¶ 8.

5. The Chapter 15 Debtors and the Monitor have also established that the borrowings under the Post-Petition Facility are appropriate under Section 364 of the Bankruptcy Code. It is undisputed that the Chapter 15 Debtors were unable to obtain unsecured credit allowable as an administrative expense as provided in 11 U.S.C. § 364(c) and were also unable to obtain credit secured only by a junior lien on property of the Chapter 15 Debtors. *See* 11 U.S.C. § 364(d).

6. From the Monitor's and Chapter 15 Debtors' perspective, it is important to point out to the Court that they are not aware of any offer from any party, specifically including the Bond Trustee or any of the bondholders, for post-petition financing in the amount of the Post-Petition Facility and on same or better financial terms. In this regard, the Monitor and the Chapter 15 Debtors further note that the operations of the Chapter 15 Debtors, while ongoing, are experiencing difficulties and it is anticipated that such difficulties will increase over the next several weeks, particularly if no further borrowing is available under the Post-Petition Facility.

The Chapter 15 Debtors' customers and suppliers are questioning their on-going business relationships with the Chapter 15 Debtors and, with knowledge of either delayed approval of further post-petition financing or the denial of further post-petition financing, many will simply choose to take their business elsewhere. The Chapter 15 Debtors' suppliers and vendors are asserting liens against the Chapter 15 Debtors' customers, which liens must be addressed in conjunction with the Chapter 15 Debtors' cash flow and the borrowings under the Post-Petition Facility. A description of the liens filed to date is set out in the Monitor's final hearing Exhibit 17. Failure to obtain final approval of the Post-Petition Facility can only be expected to accelerate the concerns and lien filings of vendors with a corresponding impact on revenue as the Chapter 15 Debtors customers are faced with such liens and have to determine how to address such liens as well as future business with the Chapter 15 Debtors. This operation reality is completely ignored by the Bond Trustee and the Bond Trustee Objection.

7. The Bond Trustee further fails to address the reality that, as understood by the Monitor and the Chapter 15 Debtors, there is likely not a current equity cushion with respect to the Syndicate and its Collateral. Consequently, any post-petition financing would require the priming of the Syndicates secured claims under the Pre-Petition Credit Agreement. Such priming would require consent by the Syndicate or adequate protection of the Syndicate's interests. The Monitor and Chapter 15 Debtors are aware of no proposed post-petition financing that meets these criteria or that would be advanced on a non-priming basis, from the Bond Trustee, any bond holders, or any other third party. Additionally, the Monitor and the Chapter 15 Debtors do not believe that the Chapter 15 Debtors can provide adequate protection to the Syndicate from a loan by a third party that primes or is pari-passu with the Syndicate's liens. Faced with these realities, the Monitor and the Chapter 15 Debtors believe that the proposed

post-petition financing to be provided by the Syndicate under the Post-Petition Facility is the best alternative and, indeed, is the only practical post-petition financing and should be approved by the Court.

III. BOND TRUSTEE'S OBJECTIONS ARE WITHOUT MERIT AND SHOULD BE DENIED

8. Faced with the clear factual need for financing and a sound legal basis for such financing, the Bond Trustee in the Bond Trustee Objection seeks to divert the Court's attention from the appropriateness of the proposed post-petition financing to the sale process which is pending before the Canadian Court and this Court and focuses its arguments on the milestones in the Post-Petition Credit Agreement. Such milestones were negotiated between the Chapter 15 Debtors and the Post-Petition Secured Parties. In light of the Chapter 15 Debtors deteriorating financial condition and inability to meet its outstanding obligations without significant further funding, and the Syndicate's likely undersecured Collateral position, the Monitor and the Chapter 15 Debtors recognize the rationale for the Syndicate's inclusion of the milestones as conditions to providing the necessary post-petition financing. The inclusion of sale milestones in post-petition financing is consistent with bankruptcy practice in the United States. In the *Response of Alberta Treasury Branches, as Agent, in Support of Motion for an Order (I) Specifically Recognizing Canadian Court Order Authorizing Debtors to Borrow Under a Post-Petition Credit Facility, (II) Approving Liens On Assets Located In The Territorial Jurisdiction Of The United States And (III) Granting Adequate Protection To Prepetition Secured Parties* [Docket No. 134] (the "Lenders Response"), the Post-Petition Secured Parties set out relevant examples of U.S. approved post-petition financing containing sales milestones. See Lenders Response, ¶ 13, page 7. For the sake of brevity and to avoid duplication, the Monitor adopts such references and arguments in this Reply.

9. The Bond Trustee in the Bond Trustee's Objection also attacks the milestones by asserting that this Court should not grant comity to the Canadian Court which has approved the Post-Petition Credit Agreement and the Post-Petition Facility containing the milestones. As noted, post-petition financing with milestones is not unfamiliar to or repugnant to United States Bankruptcy Courts and is certainly not contrary to United States public policy. Again, for the sake of brevity and to avoid duplication, the Monitor incorporates the arguments and authorities on this issue set out in the Lenders Response, ¶ 11 through 13, pages 5 through 8. The Canadian Court has appropriately considered the proposed Post-Petition Financing Facility and has approved same and this Court should recognize and respect the Canadian Court's determination in this regard.

10. In conjunction with its attack on the milestones, the Bond Trustee in the Bond Trustee Objection is essentially attacking the sale process whereby the Chapter 15 Debtors are seeking approval of the sales of their Canadian and U.S. assets as going concerns. Approval of the sales is sought in both the Canadian Court and this Court. While the Bond Trustee in the Bond Trustee Objection argues for delay so that a potentially "robust" sale process can be conducted post-petition, what the Monitor and Chapter 15 Debtors believe the Court should consider is the fact that a "robust" sale process occurred pre-filing that holders of a significant percentage of the bonds, and their legal and financial advisors were aware of and involved in that process. Essentially, however, no bondholder has made a proposal that was acceptable to the Chapter 15 Debtors and/or the Syndicate, in its capacity as pre-petition lender, and it appears to the Monitor and the Chapter 15 Debtors that such parties are now simply attempting to modify the process after being an unsuccessful initial participant. The Monitor and Chapter 15 Debtors would further contend that approval of the proposed sales is a distinct inquiry and substantial

financing is necessary to continue the Chapter 15 Debtors' operations pending the Court's consideration of the sale motions. Denial of the final Post-Petition Facility will certainly kill the sales but, most importantly, will very likely bring the Chapter 15 Debtors going concern operations to the brink of death as well. Here, the Court should focus on the financial needs of the Chapter 15 Debtors, particularly as the Bond Trustee has been provided with ample notice of the impending sales approval proceedings and is, in fact, fully contesting those proposed sales.³

11. In the Bond Trustee Objection, the Bond Trustee also states that the proposed final order omits certain critical provisions. One supposedly omitted provision is that there should be an opportunity to review the validity of the liens of the Pre-Petition Secured Parties. In the Canadian proceedings, the Monitor is undertaking just such a security review and will be submitting its security review analysis to the Canadian Court. Thus, the Monitor and the Chapter 15 Debtors do not believe that the Bond Trustee Objection should necessitate the Court denying the Post-Petition Facility on a final basis or modifying the proposed final order approving such post-petition financing.

12. The Bond Trustee also objects to ¶ 7 of the proposed final order on the Post-Petition Financing Motion with respect to the adequate protection payments to be made to the Pre-Petition Secured Parties for their fees and expenses. The Bond Trustee argues that only over-secured creditors are entitled to fees and expenses. However, the payment of fees and expenses is not being made with respect to the Pre-Petition Secured Parties Secured Claims but is instead adequate protection for use of the Pre-Petition Secured Parties Cash Collateral and is also adequate protection with respect to the priming of the Pre-Petition Secured Creditors' liens

³ The Lenders' Response at ¶¶ 14 and 15, pages 8-9 sets out relevant information on the milestones and timing of the various sale matters pending before the Canadian Court and this Court, which arguments and information are adopted herein.

by the Post-Petition Facility. Such payments also protect the Pre-Petition Secured Creditors for the use of their collateral and cash collateral and is agreed upon and negotiated adequate protection against the diminution in value of such collateral through use by the Chapter 15 Debtors.

13. Last, the Bond Trustee argues that the proposed final order should expressly provide there is no waiver of the “equities of the case” statutory rights under Section 552(b) of the Bankruptcy Code. In light of the Chapter 15 Debtors current financial condition and the necessity for the proposed Post-Petition Facility, and as the Monitor and the Chapter 15 Debtors do not understand that the “equities of the case” provisions of Section 552(b) of the Bankruptcy Code would be necessarily applicable here, the Monitor and Chapter 15 Debtors contend that specific waiver language is not necessary in the proposed final order.

IV. CONCLUSION

14. As set out above and as will be demonstrated at the final hearing on the Post-Petition Financing Motion, obtaining approval of the Post-Petition Financing Motion in the full amount requested and on a final basis is absolutely essential for the Chapter 15 Debtors. The Chapter 15 Debtors Cash Flow Forecast reflects that borrowing under the Post-Petition Facility on a final basis is required to maintain the Chapter 15 Debtors operations and is required to insure financial stability, which benefits the Chapter 15 Debtors, their employees, their customers, and their suppliers, as well as contractual counter-parties (such as landlords and lessors). Final approval of the Post-Petition Financing Motion, and the increased availability of borrowings thereunder, is also necessary as Chapter 15 Debtors financial condition is rapidly evolving in the current challenging environment for oil and gas service companies and the Chapter 15 Debtors require the necessary backstop of the Post-Petition Facility, particularly if the cash flow

projections prove to be too optimistic in this difficult and changing environment. The Monitor and the Chapter 15 Debtors believe that the Bond Trustee Objection misses the mark and that, with the proper focus on the needs of the Chapter 15 Debtors, the Court should approve the Post-Petition Financing Motion, in full, on a final basis.

WHEREFORE, the Monitor and the Chapter 15 Debtors request that the Court deny the Bond Trustee Objection and approve the Post-Petition Financing Motion on a final basis. The Monitor and the Chapter 15 Debtors also request such other and further relief to which they may be justly entitled.

Dated: April 25, 2016

Respectfully submitted,

DYKEMA COX SMITH

By: /s/ Patrick L. Huffstickler

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 25, 2016, a true and correct copy of the *Reply of PricewaterhouseCoopers Inc., As Foreign Representative , and the Chapter 15 Debtors To Bondholder Trustee's Objection To Monitor's Motion For An Order (I) Specifically Recognizing Canadian Court Order Authorizing Debtors To Borrow Under A Post-Petition Credit Facility, (II) Approving Liens On Assets Located In The Territorial Jurisdiction Of The United States And (III) Granting Adequate Protection To Prepetition Secured Parties* was served electronically upon those parties registered to receive electronic notice via the Court's CM/ECF system and via United States First Class Mail, postage prepaid on the Master Service List.

/s/ Patrick L. Huffstickler _____

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