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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

ASSOCIATION OF METROAREA AUTISTIC
CHILDREN, INC.,

Debtor.

Chapter 11

Case No. 17-10123 (MG)

**DEBTOR'S MOTION FOR INTERIM AND FINAL ORDERS AUTHORIZING
(A) SECURED POSTPETITION FINANCING, (B) USE OF CASH COLLATERAL,
(C) THE GRANT OF ADEQUATE PROTECTION, AND (D) RELATED RELIEF**

Association of Metroarea Autistic Children, Inc., the debtor and debtor in possession herein (the "Debtor"), by its attorneys, Foley & Lardner LLP, for its motion (the "Motion"), pursuant to sections 363 and 364 of title 11 of the United States Code (the "Bankruptcy Code") and Rule 4001 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for entry of interim and final orders approving (A) secured postpetition financing by Jason Selch (the "Lender"), (B) use of cash collateral, (C) the grant of adequate protection, and (D) related relief, respectively represents as follows:

INTRODUCTION

1. This Motion is submitted by the Debtor, pursuant to sections 363 and 364 of the Bankruptcy Code and Bankruptcy Rule 4001, in support of the entry of interim and final orders approving (1) postpetition financing in an amount up to One Hundred Thousand Dollars

(\$100,000.00) with the Lender, (2) use of cash collateral of JPMorgan Chase Bank, N.A. (“Chase”),¹ (3) the grant of adequate protection to Chase, and use of cash collateral, and (4) related relief. The Debtor urgently requires authorization to borrow up to \$100,000.00 from the Lender to cover immediate operating deficits during the approximately one to two weeks following the commencement of this case so as to maintain operations and preserve the value of the Debtor’s assets.

JURISDICTION

2. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding is proper in this District and before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested are sections 361, 363 and 364 of the Bankruptcy Code and Bankruptcy Rule 4001.

BACKGROUND

4. On January 20, 2017 (the “Petition Date”), the Debtor filed a voluntary petition for reorganization under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York and an order for relief was simultaneously entered. The Debtor continues in possession of its property and in the operation and management of its business as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. To date, no trustee or examiner has been appointed in this case, nor has an official committee of unsecured creditors been formed.

¹ The Debtor expressly reserves the right to challenge the amount, validity, and/or priority of any and all asserted secured claims.

5. The Debtor owns and operates a school for autistic children, grades kindergarten through high school, and provides ancillary and related services thereto. For a detailed history and description of the Debtor and its operations, the Debtor respectfully refers the Court and parties in interest to the First Day Declaration of Keishea Allen (the “Allen Declaration”), filed contemporaneously herewith and incorporated herein by reference.

SUMMARY OF INTERIM RELIEF REQUESTED

6. By this Motion, the Debtor seeks entry of an interim order substantially in the form attached hereto as Exhibit B (the “Interim Order”) as follows:

- a. Authorizing, on an interim and permanent basis, the Debtor to (i) enter into a Debtor in Possession Loan and Security Agreement (the “DIP Facility”) with the Lender, pursuant to section 364(c) and (e) of the Bankruptcy Code, providing for the advance of postpetition funds in the form of revolving loans in an amount not to exceed \$100,000 and (ii) grant to the Lender (x) security interests and liens on all property of the Debtor’s estate that is not otherwise encumbered, pursuant to Bankruptcy Code section 364(c)(2), (y) junior security interests and liens on all property of the Debtor’s estate that is subject to a lien, pursuant to Bankruptcy Code section 364(c)(3), and (z) superpriority administrative claim status with priority over all administrative expenses, pursuant to Bankruptcy Code section 364(c)(1);
- b. Authorizing the Debtor to use prepetition collateral, including cash collateral, pursuant to sections 361 and 363(c)(2) of the Bankruptcy Code, and to provide Chase with adequate protection with respect to any diminution in the value of its interests in its prepetition collateral;
- c. Approving the terms and conditions of the Debtor in Possession Loan and Security Agreement and the documents to be executed and delivered in connection therewith (collectively, the “DIP Loan Documents”) and authorizing the Debtor to execute and deliver all such documents, instruments and agreements and perform such other acts as may be required or desirable in connection therewith;
- d. Authorizing the Debtor to borrow funds under the DIP Facility to fund the Debtor’s working capital needs, this chapter 11 case and for other purposes as provided in the DIP Loan Documents, in accordance with an approved budget;
- e. Modifying the automatic stay under section 362 of the Bankruptcy Code to the extent necessary to permit the lender to implement the terms and other provisions of the DIP Loan Documents; and

- f. Scheduling and approving the form and manner of notice of a final hearing on the Motion.

SUMMARY OF THE DEBTOR'S PREPETITION FINANCING

7. On or about July 11, 2012, the Debtor entered into that certain promissory note and related agreements (the "Term Loan") with JPMorgan Chase Bank, N.A. ("Chase"), as lender, in the principal amount of \$1,000,000 and that certain line of credit note and related agreements (the "Line of Credit") also with Chase, as lender, in the principal amount of \$750,000.

8. From time to time thereafter, the Debtor and Chase entered into various renewals and extensions of the Term Loan and Line of Credit. Presently, the Debtor is past term on these loans. At present, the Debtor owes the approximate aggregate amount of \$620,000 to Chase under the Term Loan and Line of Credit. Chase has filed UCC financing statements and purports to be secured against the Debtor's personal property, including its cash.

9. Dated as of February 1, 2007, the Debtor entered into a series of transactions with New York City Industrial Development Agency (the "IDA") to finance improvements to the fourth floor for use as a high school. These agreements include, nominally, a sublease between the Debtor and the IDA, an installment sale agreement and an indenture. Pursuant to the indenture, Bank of New York (the "Trustee") is the trustee. These documents appear to support financing that purports to be secured against the facility realty and facility equipment with the filing of the sublease and mortgage in the county records. No Uniform Commercial Code ("UCC") financing statement has been filed in respect of this transaction. The balance owed under the indenture is in the approximate amount of \$1.75 million.

THE PROPOSED DIP FACILITY

10. The Debtor has determined, in the exercise of its sound business judgment, that it

requires postpetition financing to meet its ongoing working capital and general business needs, and that the terms of the DIP Facility will reasonably address the Debtor’s financing requirements and constitutes the best alternative available under the circumstances. Accordingly, subject to the Court’s approval, the Debtor chooses to enter into the DIP Loan Facility with the Lender. The principal terms of the DIP Loan Facility are summarized below.

Borrower	Debtor
Lender	Jason Selch
Amount of Loan	\$100,000
Court Approval	No portion of the DIP Facility will be available prior to the Court’s entry of an interim order, acceptable to the Lender in form and substance, approving the DIP Facility; entry of a final order, acceptable to the Lender in form and substance, approving the DIP Facility shall be entered no later than March 13, 2017
Closing Fee	None
Documentation	DIP Loan Documents and interim and final orders in form and substance acceptable to the Lender
Maturity Date	Earlier of (a) March 13, 2017, unless the Court has entered the final order by such date, (b) September 30, 2017, or (c) any earlier date pursuant to the DIP Loan Documents
Payment	Principal is due on the Maturity Date with prepayments depending upon the Debtor’s available cash Interest will accrue and be paid on the first business day of each calendar month Reasonable fees, costs and charges will be paid upon submission to the Debtor All amounts accelerated and due upon the occurrence and during the continuance of an event of default

Interest Rate	Non-default interest at 6% per annum, based on a 360-day year and the actual number of days (including the first day and excluding the last day) occurring in the period Default interest at 4% per annum greater than the non-default rate
Security	Senior lien on all of the Debtor's unencumbered property Junior lien on all of the Debtor's encumbered property
Superpriority Administrative Claim	Amounts due under the DIP Loan Facility shall constitute allowed administrative expense claims senior in priority to all administrative claims except with respect to the statutory fees of the United States Trustee
Adequate Protection	Payment of interest to Chase at its prepetition non-default rate and replacement liens to protect Chase from postpetition diminution of its collateral
Covenants, Representations and Warranties	Usual and customary
Conditions Precedent	Usual and customary
Attorneys' Fees and Costs	Lender's reasonable legal fees and costs of Lender for enforcement and/or collection of the DIP Loan Facility whether in the bankruptcy or not

DEBTOR'S URGENT NEED FOR POSTPETITION FINANCING

11. The Debtor has an immediate need for postpetition financing under the DIP Loan Facility to finance its postpetition operations and pay administrative expenses. Such financing is critical to preserve the value of the Debtor's assets, thereby maximizing the returns to all creditors in this chapter 11 case.

12. As of the Petition Date, the Debtor had less than \$5,000 in its bank accounts. The Debtor expects to receive \$600,000 to \$650,000 of monthly tuition before the end of January 2017 based upon certain prepetition communications and requires the DIP Loan facility to bridge

operating and administrative expenses and provide some liquidity until receipt of such funds.

DIP LOAN FACILITY IS THE ONLY VIABLE FINANCING

13. The Debtor, as a non-profit organization with limited revenue and encumbered cash and assets has no realistic opportunity to obtain financing from parties other than the Lender, who is a Debtor board member, especially on the under-market terms and conditions provided in the DIP Loan facility.

14. The Debtor, in the exercise of its considered business judgment and in consultation with its professional advisors, determined that the financing provided by the DIP Loan Facility secured by liens on unencumbered collateral and liens on prepetition collateral that are junior to valid prepetition liens (i) avoids protracted adequate protection litigation, (ii) is the most favorable under the circumstances and (iii) provides the Debtor the liquidity necessary to continue operations and maintain the value of its assets.

LEGAL AUTHORITY TO ENTER DIP LOAN FACILITY

15. Bankruptcy Code section 364(c) provides that the Court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt with priority over any or all administrative expenses, secured by a lien on property of the estate that is not otherwise subject to a lien, and secured by a junior lien on property of the estate that is subject to a lien.

16. Pursuant to that certain Debtor in Possession Loan and Security Agreement between the Lender and the Debtor dated as of January 20, 2017 (the “Loan Agreement”) (annexed hereto as Exhibit A) and proposed interim order (annexed hereto as Exhibit B), the Lender has agreed to lend the Debtor up to \$100,000.00 (the “Loan Advance”) for working capital to fund the Debtor’s ongoing operations during this chapter 11 case and preserve the value of the Debtor’s assets.

17. The Debtor needs emergency credit to meet its ongoing operating expenses,

without which the Debtor cannot operate. The Debtor is unable to obtain sufficient credit with which to operate its business, other than pursuant to section 364(c) of the Bankruptcy Code. The Debtor also continues to be unable to obtain unsecured credit allowable under section 503(b)(1) or 507(a) of the Bankruptcy Code solely as an administrative expense.

18. The Lender is willing to finance the Debtor's operations and capital needs as provided with specificity in the Loan Agreement which would enable the Debtor to obtain sufficient cash funds necessary to prevent a disruption of its operations and to permit the Debtor an opportunity to achieve a successful reorganization.

19. Pursuant to the DIP Loan Facility, the Lender will, subject to approval of the Court, lend the Debtor an amount up to \$100,000.00. As security for all of the Debtor's obligations and indebtedness arising under the DIP Loan Facility, as more particularly described in the proposed interim order and Loan Agreement, the Lender will receive (i) postpetition liens (a) senior in priority as against the Debtor's assets not otherwise subject to liens as of the Petition Date and (b) junior in priority as against the Debtor's assets subject to valid and enforceable liens existing on the Petition Date, pursuant to Bankruptcy Code section 364(c)(2) and (3); and (ii) an administrative claim, pursuant to Bankruptcy Code section 364(c)(1), with priority in payment over any other administrative obligations now in existence or incurred hereinafter by the Debtor and over all administrative expenses or charges, whether arising in the Debtor's chapter 11 case or in any superseding chapter 7 case except with respect to the statutory fees of the United States Trustee.

20. The Debtor requests that it be authorized and directed to do and perform all acts, to make, execute and deliver all instruments and documents and to pay all amounts which may be required or necessary for the Debtor's performance under the Loan Agreement.

DEBTOR'S IMMEDIATE CASH NEEDS

21. Approval of the Loan Agreement is essential to assist with the Debtor's immediate cash and liquidity needs, as the Debtor cannot meet its current operating expenses absent an infusion of outside funds. Annexed hereto as Exhibit C is a copy of the Debtor's projected operating expenses (the "Budget") through mid-April 2017.

22. It is essential to the continued operations of the Debtor's business that it be authorized by this Court to obtain interim financing on the terms set forth herein pending the final hearing on the Motion. Unless this Motion is approved on an interim basis, the Debtor will not be able to pay its vendors and suppliers and other administrative expenses, which would have a devastating effect on the Debtor's operations. Funds are urgently needed to meet all of the Debtor's working capital and other liquidity needs. In the absence of immediate relief, the Debtor's attempts to reorganize will be immediately and irreparably jeopardized.

23. The interim relief requested herein, pending the final hearing on the Motion, is necessary, appropriate and fully warranted, and is essential to avoid immediate and irreparable harm to the Debtor, its estate and its creditors. Accordingly, the Debtor respectfully requests that, pending the final hearing on the Motion, the provisions of the Loan Agreement be implemented and approved on an emergency interim basis, authorizing the Debtor to obtain interim postpetition financing in the aggregate amount of \$100,000 on the terms and subject to the conditions set forth in the Loan Agreement.

USE OF CASH COLLATERAL

24. Bankruptcy Code section 363(c)(2) provides that a debtor in possession may use the cash collateral of a secured creditor if such secured creditor consents to same or by Court authorization after a notice and a hearing. Section 363(c)(3) permits preliminary use of cash collateral subject to a final hearing. Section 363(e) provides for adequate protection of the

secured party's interest.

25. The form of adequate protection is decided on a case-by-case basis. See In re O'Connor, 808 F.2d 1393, 1396 (10th Cir. 1987); In re Martin, 761 F.2d 472 (8th Cir. 1985). The focus of the requirement is to protect a secured creditor from diminution in value of its interest in collateral during the reorganization process. See In re Ledgemere Land Corp., 116 B.R. 338, 343 (question of adequate protection should focus on secured lender's entire property interests, not just its interest in cash sought to be used); In re Kain, 86 B.R. 506, 513 (Bankr. W.D. Mich. 1988); In re Becker Indus. Corp., 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986).

26. To continue the day-to-day operations of the Debtor's business and to preserve the value of its assets, the Debtor requires the use of cash collateral on a preliminary basis, pending the final hearing, in accordance with the Budget. The Budget indicates that the Debtor will operate on a cash flow neutral basis; however, the Debtor has little cash remaining in its bank accounts as of the Petition Date. The Debtor requires immediate liquidity while it can secure its revenues, which remain at the same levels as prepetition.

27. As adequate protection of their interests in cash collateral, the Debtor proposes to grant Chase a replacement lien on the Debtor's postpetition accounts receivable and cash to the same extent and same priority, if any, as Chase had prepetition and in proportion with the Debtor's use of each such party's cash collateral. The Debtor believes that the cash and accounts receivable generated from postpetition operations will provide such parties with sufficient adequate protection of any interest they may have in cash collateral. Moreover, any operating deficiency will be paid from the above described postpetition financing which does not prime existing lien holders on the Debtor's cash. As a result of the foregoing, including maintenance of the Debtor's postpetition receivables and the maintenance of prepetition priority and status of the

liens against the Debtor's cash collateral, the Debtor submits that Chase will be adequately protected.

28. In order to facilitate the Debtor's operations, the Debtor requests that the Court allow it to use up to 10% more than the aggregate amount set forth in the Budget during the period covered by the Budget to take into account any unexpected expenses that may arise.

29. Accordingly, the Debtor submits that based upon the foregoing, the Court should permit the Debtor to use cash collateral, subject to the Budget (with an allowed 10% variance therefrom) and the terms described above on a preliminary basis pending the final hearing. Absent the requested relief, the business will not be able to continue to operate, impeding the Debtor's reorganization efforts to the detriment of all creditors, the Debtor, and approximately 130 employees who work for the Debtor.

GOOD FAITH

30. The terms and conditions of the DIP Loan Facility are fair and reasonable and were negotiated by the parties in good faith and at arms' length. Therefore, the Lender should be accorded the benefits of section 364(e) of the Bankruptcy Code to the extent any or all of the provisions of the DIP Loan Facility, or any interim or final order of this Court pertaining thereto, are hereafter modified, vacated, stayed or terminated by subsequent order of this or any other court.

MODIFICATION OF THE AUTOMATIC STAY

31. The Debtor seeks a modification of the automatic stay imposed by operation of section 362 of the Bankruptcy Code to the extent contemplated by the provisions of the DIP Loan Facility as described above.

32. Such stay modification provisions are customary features of post-petition financing facilities and, in the Debtor's business judgment, are reasonable under the

circumstances. Accordingly, the Debtor respectfully requests that this Court modify the automatic stay to the extent contemplated by the DIP Loan Agreement and the proposed Interim Order.

33. Pursuant to Bankruptcy Rule 4001(c)(2), the Debtor respectfully requests that this Court set a date for the Final Hearing that is no later than 45 days from the Petition Date, and approve the provisions for notice of such Final Hearing that are set forth in the proposed Interim Order.

NOTICE

34. The Debtor has served this Motion via overnight mail upon the Office of the United States Trustee, the Debtor's secured creditors, and the Debtor's 20 largest unsecured creditors. The Debtor submits that no further notice is necessary.

CONCLUSION

35. For all of the reasons set forth above, the Debtor respectfully requests that this Court enter an order granting the instant Motion in all respects, plus granting such other and further relief as may be just and proper.

Dated: New York, New York
January 23, 2017

Respectfully Submitted,

FOLEY & LARDNER LLP

/s/ Richard J. Bernard

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