



Order Filed on October 18, 2016  
by Clerk  
U.S. Bankruptcy Court  
District of New Jersey

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY**

Caption in Compliance with D.N.J. LBR 9004-1(b)

**DILWORTH PAXSON LLP**

1500 Market Street, Suite 3500E

Philadelphia, PA 19102

Telephone: (215) 575-7000

Lawrence G. McMichael (*pro hac vice* admission pending)

Anne M. Aaronson (AA1679)

Catherine G. Pappas (CP0458)

*Proposed Counsel to the Debtors and Debtors in Possession*

In re:

BINDER MACHINERY CO., LLC, *et al.*

Debtors.

Chapter 11

Case No. 16-28015(KCF)

Jointly Administered

Chief Judge Kathryn C. Ferguson

**ORDER APPROVING BIDDING PROCEDURES IN CONNECTION  
WITH SALE OF SUBSTANTIALLY ALL OF DEBTORS' ASSETS**

The relief set forth on the following pages, numbered two (2) through ten (10) is hereby  
ORDERED.

**DATED: October 18, 2016**

  
Honorable Kathryn C. Ferguson  
United States Bankruptcy Judge

Upon the Debtors' Application (the "Motion") for an Order, pursuant to 11 U.S.C. §§ 105(a) and 363(b)(1), authorizing the Debtors to (a) solicit bids for the sale of the Purchased Assets (as defined in the Motion); (b) approving competitive bidding procedures related thereto; (c) scheduling an auction (the "Auction") with respect to the sale of the Purchased Assets; and (d) granting such other relief that this Court deems just and equitable; and the Court finding that (i) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iii) the relief requested in the Motion is in the best interests of the Debtors, their estates, and their creditors; (iv) adequate notice of the Motion and the hearing thereon has been given and that no other or further notice is necessary; and (v) upon the record herein, after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein,

**IT IS HEREBY ORDERED** that:

1. The following bidding procedures are approved:
  - a. **Assets to Be Sold.** The Debtors are offering all or substantially all of their assets for sale (the "Purchased Assets" or "Assets"). The Debtors shall retain all rights and title to assets that are not subject to a bid accepted by the Debtors, after consultation with the Lender, the Floor Plan Lenders, and the Official Committee of Unsecured Creditors (the "Committee"), and approved by the Bankruptcy Court at the Sale Hearing (defined below). The Purchased Assets can be sold in their entirety, in lots or separately in the discretion of the Debtors in conjunction with their advisors and after consultation with the Lender, the Floor Plan Lenders and the Committee.
  - b. **The Bidding Process.** The Debtors, in conjunction with their advisors and after consultation with the Lender, the Floor Plan Lenders and the Committee, shall: (i) determine whether any person is a Potential Bidder (hereinafter defined); (ii) coordinate the efforts of Potential Bidders in conducting their respective due diligence investigations regarding the Debtors' businesses; (iii) receive offers from Qualified Bidders (hereinafter defined); and (iv) negotiate any offer made to purchase the Assets, together or separately (collectively, the "Bidding Process"). Neither the Debtors nor their representatives shall be obligated to furnish

any information of any kind whatsoever relating to the Assets to any person who is not a Potential Bidder.

c. **Participation Requirements.** Unless otherwise ordered by the Bankruptcy Court, for cause shown, or as otherwise determined by the Debtors, in order to participate in the Bidding Process each person (a “Qualified Bidder”) must submit a bid that adheres to the following requirements (a “Qualified Bid”):

- i. All Qualified Bids must be submitted in the form of the Asset Purchase Agreement which will annexed hereto as **Exhibit C** as a supplemental filing (the “APA”) and Proposed Sale Order which is annexed hereto as **Exhibit B** to Phoenix Capital Resources, Michael Jacoby at [mjacoby@phoenixmanagement.com](mailto:mjacoby@phoenixmanagement.com), not later than 5:00 p.m. (prevailing Eastern Time) on Monday, **November 28, 2016** (the “Bid Deadline”). Phoenix shall timely distribute the bids to the Lender, Floor Plan Lenders and the Committee. Notwithstanding anything to the contrary herein, if the Floor Plan Lenders are a bidder, the Floor Plan Lenders shall not receive the bids from Phoenix nor be deemed to be a consultation party with respect to these bid procedures.
- ii. All Qualified Bids shall be in the form of the APA and accompanied by a Proposed Sale Order, together with a comparison showing all changes from the APA and Proposed Sale Order, from a person or persons that the Debtors, after consultation with Lender, the Floor Plan Lenders and the Committee, deem financially able to consummate the purchase of the Assets, which letter states:
  - (1) that such Qualified Bidder offers to purchase some or all of the Assets upon the terms and conditions set forth in APA, together with its exhibits and schedules, including terms relating to price and the time of closing (the “Proposed Agreement”);
  - (2) that such Qualified Bidder is prepared to consummate the transaction on or before Monday, **December 12, 2016** (the “Outside”

Closing Date”), subject to extension by consent or Court order, following entry of an order of this Court approving the Sale to the Successful Bidder (the “Sale Order”);

- (3) that such Qualified Bidder’s offer is irrevocable until the earlier to occur of (a) two (2) business days after the closing of the sale of the Purchased Assets (b) the Assets have been withdrawn from the Sale or (c) thirty (30) days after the date the Sale Order is entered by this Court;
  - (4) the actual value of such Qualified Bidder’s bid to the Debtors’ estates; and
  - (5) which of the Debtors’ leases and executory contracts are to be assumed in connection with the consummation of the Qualified Bidder’s bid. The Qualified Bidders are responsible for applying to each franchisor or equipment manufacturer whose franchise or dealership each Qualified Bidder wishes to maintain, and for obtaining such approvals prior to the closing of the Sale.
- iii. All Qualified Bids shall be accompanied by a deposit into escrow with the Debtors of an amount equal to 10% of the total cash component of the proposed purchase price (the “Good Faith Deposit”).
  - iv. All Qualified Bids shall be accompanied by satisfactory evidence, in the opinion of the Debtors and their advisors after consultation with the Lender, the Floor Plan Lenders and the Committee, of committed financing or other ability to perform all transactions contemplated by the Proposed Agreement.
  - v. All Qualified Bids, or combination thereof, must provide for funding of all Obligations (as defined in the Ratification Agreement) owed to Lender, in full, in cash on or before the Outside Closing Date. All Qualified Bids, or combination thereof, must provide for the payment in full of all Obligations of

the Debtors to the Floor Plan Lenders, unless Floor Plan Lenders agree otherwise, in the event that the Komatsu Senior Lien Collateral (as hereinafter defined) is to be purchased.

- vi. Qualified Bids cannot contain any contingencies, including, without limitation, or financing conditions, other than those agreed to by the Debtors, after consultation with the Lender, the Floor Plan Lenders, the Committee and/or any other affected creditors and set forth in the Proposed Agreement.
- vii. All Qualified Bids shall include a list of all executory contracts of the Debtors the Qualified Bidder will require the Debtors to assume and reject, a statement that the Qualified Bidder will assume all cure costs associated with all executory contracts being assumed and sufficient information to satisfy the adequate assurance requirements for the assumption of any executory contracts. With respect to the Debtors' executory contracts with the Floor Plan Lenders and any other distributor or franchisor, any Potential Bidder interested in taking an assignment of such contracts will be responsible for complying with the application and approval process of such Floor Plan Lenders and/or distributor or franchisor, subject to applicable non-bankruptcy law, including the provisions of the New Jersey Franchise Practices Act, N.J.S.A. 56:10-1 *et seq.* The Floor Plan Lenders and any other distributor or franchisor shall use their good faith efforts to accelerate the application and approval process.
- viii. All Qualified Bids must provide for adequate workers' compensation insurance coverage and for adequate working capital financing to finance going concern operations to the extent contemplated, and to provide adequate assurance of future performance to counterparties to any executory contracts and unexpired leases to be assumed by the Potential Bidder.

- d. **Stalking Horse Bid.** The Debtors reserve the right to designate a Qualified Bidder as a stalking horse (the “Stalking Horse Bidder”) with certain bidding protections to the Stalking Horse Bidder, including breakup fees and expense reimbursements, each subject to the occurrence of certain conditions set forth in the Stalking Horse Agreement, subject to higher or otherwise better offers, as approved by an order of the Court after a motion brought on shorted notice to be heard at the earliest convenient date for the Court. The Debtors will provide separate notice of such hearing and related objection deadlines as formally scheduled by the Court.
- e. **Due Diligence.** The Debtors shall afford each Potential Bidder, Lender, the Floor Plan Lenders and the Committee (hereinafter defined) due diligence access to the Purchased Assets. Due diligence access may include management presentations as may be scheduled by the Debtors, access to data rooms, on-site inspections and such other matters which a Potential Bidder may request and as to which the Debtors, in their sole discretion, may agree. Neither the Debtors nor any of their affiliates (nor any of their respective representatives) are obligated to furnish any information relating to the Purchased Assets to any person except to Potential Bidders. Potential Bidders are advised to exercise their own discretion before relying on any information regarding the Assets provided by anyone other than the Debtors or their representatives. To be a “Potential Bidder,” each bidder must have delivered the following:
  - i. an executed confidentiality agreement in form and substance satisfactory to the Debtors; and
  - ii. current audited and unaudited financial statements or other financial information of the Potential Bidder, or, if the Potential Bidder is an entity formed for the purpose of acquiring the Purchased Assets, current audited and unaudited financial statements or other financial information of the Potential Bidder’s equity holder or other financial backer, or such other form of financial disclosure and evidence acceptable to the Debtors and their advisors in their sole discretion, and after consultation with the Lender, the Floor Plan Lenders and the Committee, demonstrating such Potential Bidder’s ability to close the proposed transaction, to finance going concern operations to the extent contemplated, and to provide adequate assurance of future performance to counterparties to any executory contracts and unexpired leases to be assumed by the Potential Bidder.

- f. **“As Is, Where Is.”** The sale of the Purchased Assets shall be on an “as is, where is” basis and without representations or warranties of any kind, nature, or description by the Debtors, their agents or estates, except to the extent set forth in the Proposed Agreement of the Successful Bidder. Except as otherwise provided in the Proposed Agreement, all of the Debtors’ right, title and interest in and to the Purchased Assets to be acquired shall be sold free and clear of all liens, claims, charges, security interests, restrictions and other encumbrances of any kind or nature thereon and there against. Each bidder shall be deemed to acknowledge and represent that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or Purchased Assets in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Purchased Assets, or the completeness of any information provided in connection with the Purchased Assets, the Bidding Process or the Auction, except as expressly stated in these Bidding Procedures or, as to the Successful Bidder, in the applicable Proposed Agreement.
- g. **Credit Bid.** The Debtors acknowledge and agree the Lender is hereby deemed to be a Qualified Bidder without any further action. In accordance with the Ratification Agreement, the Lender shall have the right to credit bid the amount of its claims arising under the terms of the Credit Documents (as defined in the Ratification Agreement), provided that if any Collateral (as defined in the Ratification Agreement) which constitutes Komatsu Senior Lien Collateral (as defined in the Floor Plan Intercreditor Agreement), is included in such credit bid, Lender shall pay Komatsu America (the “Floor Plan Lenders”) in cash an amount that is consistent with the terms of the Floor Plan Intercreditor Agreement, the Interim Order and/or final financing order, as applicable, and as allowed by the Bankruptcy Court. Further, the Floor Plan Lenders shall have the right to credit bid the amount of its and their claims arising under the terms of the Floor Plan Loan Agreements, provided that if any Collateral which constitutes Callidus Collateral (as defined in the Floor Plan Intercreditor Agreement) is included in connection with any such credit bid, the Floor Plan Lenders shall pay to Lender all Post-Petition Obligations (as defined in the Ratification Agreement) in cash in an amount that is consistent with the terms of the Floor Plan Intercreditor Agreement, the Interim Order and/or final financing order, as applicable, and as allowed by the Bankruptcy Court.
- h. **Auction.** If the Debtors receive more than one Qualified Bid prior to the Bid Deadline, the Debtors shall conduct an auction (the “Auction”) at the offices of Dilworth Paxson LLP, 1500 Market Street, Suite 3500E, Philadelphia, PA 19102 on Wednesday, **December 1, 2016**, beginning at

11:00 a.m. (prevailing Eastern Time) or such later time or other place as the Debtors, after consultation with the Lender, the Floor Plan Lenders and the Committee, shall notify all Qualified Bidders who have submitted Qualified Bids. Only representatives of the Debtors, the United States Trustee, the Lender, the Floor Plan Lenders, the Committee, and any Qualified Bidders who have timely submitted Qualified Bids shall be entitled to attend the Auction. The Debtors may announce at the Auction additional procedural rules that are reasonable under the circumstances (e.g., the amount of time allotted to make subsequent overbids) for conducting the Auction, so long as such rules are not inconsistent with these Bidding Procedures. Based upon the terms of the Qualified Bids received, the number of Qualified Bidders participating in the Auction, and such other information as the Debtors determine is relevant, the Debtors, in their sole discretion, and after consultation with the Lender, the Floor Plan Lenders and the Committee, may conduct the Auction in the manner they determine will achieve the maximum value for the Purchased Assets. At the Auction, the minimum initial bid must provide for cash payment in an amount not less than the amount required to satisfy the Obligations owed to the Lender and Floor Plan Lenders. Subsequent bids shall be made in minimum increments of \$100,000.

- i. **Review of Bids.** As soon as practicable after the conclusion of the Auction, the Debtors shall: (i) review each Qualified Bid on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the sale; (ii) consult with Lender, the Floor Plan Lenders and the Committee regarding their analysis; and (iii) identify the highest or otherwise best offer or combination of offers for the Purchased Assets (the “Successful Bid”) and any second-highest or best offer. The Debtors will present the Successful Bid to the Bankruptcy Court for approval at the Sale Hearing. The Debtors reserve all rights to not submit any bid which is not acceptable to the Debtors, and after consultation with the Lender and the Committee.
- j. **Acceptance of Qualified Bids.** The Debtors shall sell the Purchased Assets to the Successful Bidder submitting the highest or otherwise best Qualified Bid at the Auction, after approval of such Qualified Bid by the Bankruptcy Court at the Sale Hearing. The Debtors’ presentation to the Bankruptcy Court for approval of a particular Qualified Bid does not constitute the Debtors’ acceptance of such Qualified Bid. The Debtors shall have accepted a Qualified Bid only when that Qualified Bid has been approved by the Bankruptcy Court at the Sale Hearing.
- k. **Motion to Accept or Reject Executory Contracts.** No later than one (1) Business Day after the determination of the Successful Bid, the Debtors



shall file a schedule of all executory contracts and unexpired leases that the Successful Bidder wishes to assume as part of its successful bid.

- l. **The Sale Hearing.** A hearing to confirm the results of the Auction and to approve the sale of the Purchased Assets (the “Sale Hearing”) will be held before The Honorable Kathryn C. Ferguson, United States Bankruptcy Judge, at the Clarkson S. Fisher U.S. Courthouse, 402 East State Street, Trenton, NJ 08608, no later than Tuesday, **December 6, 2016** at a time to be determined. The Sale Hearing may be adjourned or rescheduled after consultation with the Lender, the Floor Plan Lenders and the Committee, without notice other than by an announcement of the adjourned date in open court.
- m. **Back up Bid.** Following the entry of the Sale Order approving the Sale, if the Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the next highest or otherwise best Qualified Bid(s), shall be deemed to be the Successful Bid(s) and the Debtors shall be authorized to effectuate such sale without further order of the Bankruptcy Court.
- n. **Return of Good Faith Deposit.** The Good Faith Deposits of all Qualified Bidders shall be retained by the Debtors and all Qualified Bids will remain open and irrevocable, notwithstanding Bankruptcy Court approval of a sale pursuant to the terms of a Successful Bid by a Qualified Bidder, until two (2) business days after the closing of the Sale of the Purchased Assets. If a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder (other than a failure to obtain requisite approvals due to no fault of the Successful Bidder), the Debtors will not have any obligation to return the Good Faith Deposit deposited by such Successful Bidder, which shall be retained by the Debtors as liquidated damages.
- o. **Modifications.** The Debtors may: (i) determine, in their business judgment, after consultation with the Lender, the Floor Plan Lenders and the Committee, which Qualified Bid, if any, is the highest or otherwise best offer; (ii) consult with the representatives of the Committee or other significant constituent in connection with the bidding process and Bid Procedures; and (iii) reject at any time before entry of the Sale Order approving a Qualified Bid, any bid that, in the Debtors’ sole discretion, after consultation with the Lender, the Floor Plan Lenders and the Committee, is: (x) inadequate or insufficient; (y) not in conformity with the requirements of the Bid Procedures, the Bankruptcy Code, or the terms and conditions of sale; or (z) contrary to the best interests of the Debtors, their estates, their creditors and other parties in interest. At or before the Sale Hearing, the Bankruptcy Court, or, consistent with the purposes of the Bid Procedures to obtain the highest or otherwise best offer(s) for the

Assets, the Debtors, and after consultation with the Lender, the Floor Plan Lenders and the Committee, may impose such other terms and conditions as it or they may determine to be in the best interests of the Debtors' estates, their creditors and other parties in interest.

- p. **Reservation of Rights:** In addition to their rights set forth in sections (i.) and (m.) above, the Debtors, after consultation with the Lender, the Floor Plan Lenders and the Committee, may modify these Bid Procedures or impose, at or prior to the Auction, additional terms and conditions on the proposed Sale of the Purchased Assets if, in their reasonable judgment, such modifications would be in the best interests of the Debtors' estates and promote an open and fair sale process, including but not limited to withdrawing particular Assets from the sale.

2. As provided in the Bid Procedures, the Debtors shall conduct the Auction on **December 1, 2016** at 11:00 a.m. prevailing Eastern Time at the offices of Dilworth Paxson LLP, 1500 Market Street, Suite 3500E, Philadelphia, PA 19107.

3. The form of Sale Notice attached to this Order as Addendum 1 is hereby approved as sufficient.

4. Within three (3) business days after entry of this Order, the Debtors: (a) shall provide a copy of the Sale Notice and this Order to (i) counsel to the Committee; (ii) the Office of the United States Trustee; (iii) counsel to the Debtors' secured creditors; (iv) those parties that request notice of pleadings in the Debtors' chapter 11 cases pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure; and (v) any known prospective bidders at the Auction; and (b) serve the Sale Notice by first class mail on all known creditors of the Debtors.

5. Within seven (7) business days after the entry of this Order, the Debtors shall file a motion or other proceeding ("November 22 Proceedings") to determine cure or claim amounts to contracts and leases, equipment leases and/or security agreements, title or any other issues impacting the Auction; provided, however, the Committee's challenge rights under Rules 7001(2) and 4003(d) of the Federal Rules of Bankruptcy Procedure and under Rule 4001-3 of the

Local Rules of the Bankruptcy Court for the District of New Jersey are not impacted or abridged serve such notice on (i) counsel to the Committee; (ii) the Office of the United States Trustee; (iii) counsel to the Debtors' secured creditors; (iv) those parties that request notice of pleadings in the Debtors' chapter 11 cases pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure; and (v) any nondebtor party to each executory contract and unexpired lease. Objections to the November 22 Proceedings, if any, shall be filed on or before **November 11, 2016**. A hearing on any objection shall be held on Monday, **November 22, 2016**, at a time scheduled by the Court. Notwithstanding anything to the contrary herein, pending the November 22 Proceedings, distributors and/or franchisors and any other creditor or party in interest reserves their respective rights to object to (a) assumption of their agreements or contracts pursuant to 11 U.S.C. §365(c)(1), or (b) the sale of any asset in which they hold an interest (including an ownership interest).

6. Within one (1) business day after the conclusion of the Auction, the Debtors shall cause their counsel to file with the Court a supplement outlining the identity of the Successful Bidder of the Purchased Assets and the purchase price received therefor.

7. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

8. Notwithstanding the possible applicability of Bankruptcy Rules 6004, 6006, 7062, 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable.

9. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

10. This Court shall retain jurisdiction to resolve any dispute relating to the interpretation of the Bid Procedures and this Order. To the extent any provisions of this Order are inconsistent with the Motion, the terms of this Order shall control.

1.

**ADDENDUM 1 TO BID PROCEDURES ORDER**

**[SALE NOTICE]**

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY**

Caption in Compliance with D.N.J. LBR 9004-1(b)

**DILWORTH PAXSON LLP**

1500 Market Street, Suite 3500E

Philadelphia, PA 19102

Telephone: (215) 575-7000

Lawrence G. McMichael (*pro hac vice* admission pending)

Anne M. Aaronson (AA1679)

Catherine G. Pappas (CP0458)

*Proposed Counsel to the Debtors and Debtors in Possession*

In re:

BINDER MACHINERY CO., LLC, *et al.*

Debtors.

Chapter 11

Case No. 16-28015(KCF)

Jointly Administered

Chief Judge Kathryn C. Ferguson

**ADDENDUM 1 TO ORDER (A): APPROVING PROCEDURES FOR THE  
SALE OF THE DEBTORS' ASSETS; (B) SCHEDULING AN  
AUCTION; (C) APPROVING FORM OF NOTICE; AND  
(D) GRANTING RELATED RELIEF**

**NOTICE OF BID DEADLINE AND AUCTION IN CONNECTION  
WITH THE SALE OF CERTAIN OF THE DEBTORS' ASSETS**

**PLEASE TAKE NOTICE** that, on September 28, 2016 the above-captioned debtors and debtors in possession (the "Debtors") filed a motion (the "Motion") seeking approval of, among other things (A) auction and bidding procedures (the "Bid Procedures") in connection with the sale (the "Sale") of all or substantially all of their assets (the "Assets") and (B) related relief with the United States Bankruptcy Court for the District of New Jersey (the "Bankruptcy Court"). By order dated October \_\_, 2016, the Bankruptcy Court approved the Bid Procedures set forth in the Bid Procedures Order [*Docket No.* \_\_] (the "Bid Procedures Order").

**PLEASE TAKE FURTHER NOTICE** that the Debtors intend to file a motion or other pleading to determine cure amounts and interests in property prior to the Auction, which hearing will be held before The Honorable Kathryn C. Ferguson, Chief United States Bankruptcy Judge, at the Clarkson S. Fisher U.S. Courthouse, 402 East State Street, Trenton, NJ 08608, on or about

**November 22, 2016.** The Debtors will provide separate notice of this Hearing, as formally scheduled by the Court, as well as related objection deadlines.

**PLEASE TAKE FURTHER NOTICE** that, all interested parties are invited to submit a Qualified Bid and to make offers to purchase the Assets in accordance with the terms of the Bid Procedures and the Bid Procedures Order. The deadline to submit bids (the “Bid Deadline”) is **November 28, 2016 at 5:00 p.m. (prevailing Eastern Time).**

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Bid Procedures Order, the Debtors intend to conduct an auction (the “Auction”) for the sale of the Assets at the offices of Dilworth Paxson LLP, 1500 Market Street, Suite 3500E, Philadelphia, PA 19107 on **December 1, 2016 beginning at 11:00 a.m. (prevailing Eastern Time),** or at such other place and time as the Debtors shall notify all Qualified Bidders who have submitted Qualified Bids.

**PLEASE TAKE FURTHER NOTICE** that, the Debtors intend to seek the Bankruptcy Court’s approval of the Sale of the Assets at a hearing (the “Sale Hearing”) which the Debtors have requested to be held before The Honorable Kathryn C. Ferguson, Chief United States Bankruptcy Judge, at the Clarkson S. Fisher U.S. Courthouse, 402 East State Street, Trenton, NJ 08608, at ~~10:00 a.m.~~<sup>2:00 p.m.</sup> **(prevailing Eastern Time) on December 6, 2016.** The Debtors will provide separate notice of the Sale Hearing and related objection deadlines as formally scheduled by the Court.

**PLEASE TAKE FURTHER NOTICE** that, this Notice is subject to the complete terms and conditions of the Motion, the Bid Procedures and the Bid Procedures Order, which shall control in the event of any conflict, and the Debtors encourage parties in interest to review such documents in their entirety. Copies of these pleadings may be obtained by written request to counsel to the Debtors, c/o Dilworth Paxson LLP, 1500 Market Street, Suite 3500E, Philadelphia, PA 19107, Attn: Lawrence G. McMichael and Anne M. Aaronson. In addition, copies of the aforementioned pleadings may be found on the Bankruptcy Court’s website, [www.njb.uscourts.gov](http://www.njb.uscourts.gov), and are on file with the Bankruptcy Court and available for inspection during regular business hours at the office of the Clerk of the Bankruptcy Court, United States Bankruptcy Court for the District of New Jersey, Clarkson S. Fisher U.S. Courthouse, 402 East State Street, Trenton, NJ 08608.

Dated: October \_\_, 2016

/s/

---

**DILWORTH PAXSON LLP**

Lawrence G. McMichael

Anne M. Aaronson

Catherine G. Pappas

1500 Market St., Suite 3500E

Philadelphia, PA 19102

Telephone: (215) 575-7000

Facsimile: (215) 575-7200

*Proposed Counsel to the Debtors and Debtors in Possession*

**EXHIBIT B**

[Proposed Sale Order]



**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY**

Caption in Compliance with D.N.J. LBR 9004-1(b)

**DILWORTH PAXSON LLP**

1500 Market Street, Suite 3500E

Philadelphia, PA 19102

Telephone: (215) 575-7000

Lawrence G. McMichael (*pro hac vice* admission pending)

Anne M. Aaronson (AA1679)

Catherine G. Pappas (CP0458)

*Proposed Counsel to the Debtors and Debtors in Possession*

In re:

BINDER MACHINERY CO., LLC, *et al.*

Debtors.

Chapter 11

Case No. 16-28015(KCF)

Jointly Administered

Chief Judge Kathryn C. Ferguson

**ORDER AUTHORIZING AND APPROVING  
SALE OF SUBSTANTIALLY ALL OF DEBTORS' ASSETS FREE AND CLEAR OF  
LIENS, CLAIMS, AND ENCUMBRANCES AND GRANTING RELATED RELIEF**

The relief set forth on the following pages, numbered two (2) through six (6) is hereby ORDERED.

UPON the Debtors' Application for entry of an order, pursuant to 11 U.S.C. §§ 105(a) and 363(b)(1) and Rule 6004 of the Federal Rules of Bankruptcy Procedure, (a) authorizing the Debtors to sell the Purchased Assets (as defined in the Motion) to the Successful Bidder (as defined in the Motion and as used herein, the "Buyer"), free and clear of liens, claims, interests, and encumbrances; and (b) granting such other relief that this Court deems just and equitable (the "Sale Motion"); and the Court finding that (i) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iii) the relief requested in the Motion is in the best interests of the Debtors, their estates, and their creditors; (iv) adequate notice of the Motion and the hearing thereon has been given and that no other or further notice is necessary; and (v) upon the record herein, after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein,

**IT IS HEREBY FOUND AND DETERMINED** that:

- A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.
- B. The Debtors and the Buyer have at all times acted in good faith and in accordance with applicable law. The Buyer has acted and is acting in good faith within the meaning of Section 363(m) of the Bankruptcy Code. The sale of the Purchased Assets to the Buyer pursuant to the Asset Purchase Agreement attached hereto as

**Addendum 1** and as set forth in this Order is a sale in good faith within the meaning of Section 363(m) of the Bankruptcy Code, and the Buyer is entitled to the protections of Section 363(m). None of the actions of the Buyer has chilled or adversely impacted a fair, competitive, and open sale process. The Buyer has not violated Section 363(n) of the Bankruptcy Code by any action or inaction, and there has been no evidence presented to this Court that the sale price was controlled by any agreement among potential bidders or that any activity prohibited by Section 363(n) of the Bankruptcy Code has occurred.

- C. The Debtors may sell the Purchased Assets free and clear of all liens, claims, encumbrances and interests, including but not limited to any lien, claim, encumbrance or interest for taxes in respect of the Purchased Assets for any years prior to the closing date (whether or not assessed) because one or more of the standards set forth in Sections 363(f) of the Bankruptcy Code has or have been satisfied. Those holders of liens, claims, encumbrances, and/or interests against any of the Debtors, their estates or any of the Purchased Assets who did not object, or who withdrew their objections, to the sale or the Motion are deemed to have consented pursuant to Section 363(f)(2) of the Bankruptcy Code. Those holders of liens, claims, encumbrances, and interests who did object, who did not object, or who withdrew their objections fall within one or more of the other subsections of Section 363(f) and are adequately protected by having their liens, claims, encumbrances, and interests, if any, in each instance against any of the applicable Debtors, their estates, or any of the Purchased Assets, attach to the cash proceeds of the sale as set forth herein.

D. The Buyer would not have entered into the Asset Purchase Agreement and would not consummate the sale of the Purchased Assets, thus materially, adversely affecting the Debtors, their estates, and their creditors, if the sale of the Purchased Assets to the Buyer were not free and clear of all liens, claims and encumbrances.

**IT IS HEREBY ORDERED** that:

1. The Motion is granted.
2. The sale of the Assets to the Buyer, pursuant to the terms and conditions contained in the Asset Purchase Agreement executed by the Debtor and the Buyer, is hereby approved and such Buyer shall be deemed a purchaser in good faith and entitled to the protections provided in section 363(m) of the Bankruptcy Code.
3. The Debtors are selling the Purchased Assets “AS IS” and “WHERE IS” without any representation of any kind as to the condition or title, except as set forth in the Asset Purchase Agreement.
4. The Asset Purchase Agreement was negotiated, proposed, and entered into by the parties without collusion, in good faith and arms’ length bargaining position.
5. The Assets will be sold, transferred, conveyed and assigned to the Buyer upon the closing, free and clear of all liens, claims and encumbrances of any type or description—subject to the terms of the Asset Purchase Agreement—with all such liens, claims and encumbrances, to the extent valid, perfected and enforceable, to transfer, affix and attach to the

proceeds of the sale of the encumbered asset in the same order of priority as they existed with respect to the asset.

6. The foregoing provision of this Order shall be self-executing, and notwithstanding the failure of any other party to execute, file or obtain releases, termination statements, consents or other instruments to consummate or implement the provisions hereof or of the Auction, all liens, claims and encumbrances of any kind and nature in or against the Assets transferred, sold and assigned shall be deemed released, except as provided in the Asset Purchase Agreement executed between the Debtor and the Buyer.
7. With the exception of parties holding “Permitted Encumbrances” or “Assumed Liabilities” under the Asset Purchase Agreement, all persons or entities holding liens, claims or encumbrances of any kind and nature with respect to the Assets transferred, sold and assigned are barred from asserting such liens, claims or encumbrances against the Assets transferred, sold and assigned.
8. The Debtor and all persons affected by this Order are authorized and directed to execute and deliver such documents and instruments and to take such other action as may be reasonably necessary to carry out the transactions authorized by this Order and contemplated by the Auction, including execution of the Asset Purchase Agreement.
9. The Sale of the Purchased Assets is in the best interests of the Debtors, their creditors and their estates.

10. Closing of the Sale shall occur on or before December 12, 2016.

11. This Order shall be binding upon the Debtors, their successors and assigns, and any trustee that may be appointed in this case or any case under chapter 7 of the Bankruptcy Code to which such case may be converted, and any affected third parties, including without limitation all persons and entities asserting any encumbrances against or interest in the Debtors' estates or any of their assets, and all other persons and entities, including all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons or entities who may be required by operation of law or by the duties of their offices to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report to or insure title or state of title in or to any of the Debtors' assets.

12. Nothing contained in any plan of liquidation confirmed in the Debtors' cases or the order(s) confirming any plan of liquidation, or any order(s) dismissing the Debtors' cases or converting the Debtors' cases to a chapter 7 liquidation shall conflict with or derogate from the terms of this Order. Further, the terms of this Order and any actions taken pursuant hereto shall survive the entry of any Order which may be entered confirming any plan of liquidation for the Debtors or converting the Debtors' cases from a chapter 11 to a case under chapter 7 of the Bankruptcy Code. The

provisions of this Order shall not be modified, impaired, or superseded by any subsequent Order, and this Order shall survive entry of, and shall govern with respect to any conflict with, any subsequent Order of Court, including the terms, conditions, and provisions of any plan of liquidation.

13. If any person or entity that has filed financing statements or other documents or agreements evidencing interests, claims, liens or encumbrances, in the Purchased Assets shall not have delivered to the Debtors prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction and releases of such interests, the Debtors or the Buyer are authorized to execute and file such statements, instruments, releases and other documents with respect to the Purchased Assets.
14. The Court shall retain jurisdiction for the purpose of enforcing the terms and conditions of the auction and this Order.
15. The fourteen (14) day stay provided in Federal Rule of Bankruptcy Procedure 6004(h) is hereby waived.

**EXHIBIT C**

[Asset Purchase Agreement]