

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**IN RE:**

**GINGER OIL COMPANY**  
**Debtor**

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§  
§  
§  
§

**CASE NO. 16-30678-H1-11**  
**(Chapter 11)**  
**JUDGE ISGUR**

**EXPEDITED MOTION UNDER 11 U.S.C. §§ 105 AND 364 AND  
FED. R. BANKR. P. 4001 FOR ENTRY OF ORDER AUTHORIZING THE  
DEBTOR TO INCUR POSTPETITION FINANCING**

**This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 14 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing.**

**Expedited relief has been requested. If the court considers the motion on an expedited basis, then you will have less than 14 days to answer. If you object to the requested relief or if you believe that the expedited consideration is not warranted, you should file an immediate response.**

**A HEARING HAS BEEN REQUESTED FOR 2:00 P.M. ON JULY 20, 1016, IN COURTROOM NO. 404, 515 RUSK AVE., HOUSTON, TEXAS 77002.**

**REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.**

**TO THE HONORABLE MARVIN ISGUR, UNITED STATES BANKRUPTCY JUDGE:**

Ginger Oil Company. (“Ginger Oil” or the “Debtor”) files this Expedited Motion (the “Motion”) under 11 U.S.C. §§105 and 364 and Fed. R. Bankr. P. 4001 for entry of an order authorizing the Debtor to Incur Post-petition Financing (the “DIP Financing”) and respectfully represent as follows:

## **JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this application pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this application is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory basis for the relief requested herein is sections 105, 361, 362, 363, and 364 of title 11 of the United States Code (the “Bankruptcy Code”), and Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

## **BACKGROUND**

### **A. General Background**

3. On February 4, 2016 (the “Petition Date”), the Debtor filed a Voluntary Petition for Reorganization under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of Texas (the “Court”) in order to protect its business as an ongoing concern.

4. The Debtor continues to operate its business and manage its property as a debtor in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code. No trustee, examiner, or creditors’ committee has been appointed in the Debtors’ cases.

### **B. Relevant Background**

5. The Debtor was formed on December 31, 1982. On February 17, 1988, it merged with Acquisition and Divestment Consultants, Inc. with the Debtor being the surviving corporation in the merger. The Debtor is in the business of oil and gas exploration and development in Arkansas, Louisiana and Texas.

6. On September 13, 2013, the Debtor executed a credit agreement and promissory note with Independent Bank, (“IBTX”) in the original amount of \$25,000,000.00. The current

balance on the note is approximately \$3,231,066.37 including interest due on the date of filing. This note bears interest the rate of 4% or prime rate plus 0.5%, whichever is greater. The Debtor traditionally has paid 4%. The claims of IBTX are secured by a first lien against substantially all the assets of the Debtor.

7. The Debtor has obtained use of cash collateral on an interim basis since the Petition Date. However, the Debtor's assets do not generate sufficient cash collateral to fund its ongoing obligations, fund the development of its oil and gas assets and provide sufficient funding for a plan of reorganization.

8. To that end, the Debtor entered into negotiations for DIP Financing that will be provided by its parent company, Ginger Oil AB (the "DIP Lender").<sup>1</sup> The DIP Financing is sufficient to fund the Debtor's operational needs not presently covered by cash collateral and will be used in conjunction with additional proposed financing to fund a plan of reorganization and the Debtor's operations post-petition. On May 13, 2016, the Debtor filed a term sheet for the proposed DIP Financing [Docket No. 55] and has since been negotiating the final terms of such DIP Financing. The following is a summary of key terms of the proposed DIP Financing:

<u>Term</u>	<u>Description<sup>2</sup></u>
<b>DIP Lender</b>	<ul style="list-style-type: none"> <li>• Ginger Oil, AB, a Swedish Corporation and parent of the Debtor.</li> </ul>
<b>DIP Financing Amount</b>	<ul style="list-style-type: none"> <li>• \$500,000, of which \$290,000 be paid upon approval of the Motion with the remaining balance to be in the form of a line of credit which can be drawn down by the Debtor in accordance with the Budget attached hereto as Exhibit "A".</li> <li>• An additional amount of approximately \$92,000 will be made available upon approval to enable the Debtor to pay down the outstanding secured principal balance owed to IBTX to \$2,800,000.</li> </ul>

<sup>1</sup> The negotiations of the DIP Financing have been at arms-length. The principals of US Energy Group AB (which now controls Ginger Oil AB) have been negotiating the terms of the DIP Financing with the Debtor's management who are not affiliated with US Energy Group AB.

<sup>2</sup> Capitalized terms used herein and not otherwise defined have the meaning set forth in the Order approving this Motion.

<b>Interest Rate</b>	<ul style="list-style-type: none"> <li>8% per annum, with the default rate at 10% per annum.</li> </ul>
<b>Fees</b>	<ul style="list-style-type: none"> <li>Debtor and /or Ginger Oil AB shall pay up to \$50,000 of the DIP Lender's attorney's fees and expenses without the need for further approval from the Bankruptcy Court.</li> </ul>
<b>Collateral</b>	<ul style="list-style-type: none"> <li>As security for the DIP Financing, the DIP Lender will be granted (i) valid, perfected, first-priority priming liens, subject in priority and payment to the Carve-Out (as defined in the Cash Collateral Order<sup>3</sup>) and IBTX Expenses<sup>4</sup>, on all of the Debtor's real property interests plus extractions therefrom as to the Debtor's currently non-producing properties described in the attached <b>Exhibit "B"</b> (the "Non-producing Properties"); and (ii) valid, perfected, second priority liens, subject and subordinate in priority and payment to the liens and security interests of IBTX (including, without limitation, the replacement liens and security interested granted to IBTX under the Cash Collateral Order) (the "Existing IBTX Liens"), the Carve-Out and IBTX Expenses, on all of the Debtor's real property interests plus extractions therefrom as to the Debtor's producing properties described in the attached <b>Exhibit "C"</b> (the "Producing Properties") (collectively, the "DIP Lender Liens").</li> </ul>
<b>DIP Lender Super Priority Claim</b>	<ul style="list-style-type: none"> <li>As additional security, the DIP Lender shall be granted a superpriority administrative expense claim (the "DIP Lender's Super Priority Claim") having priority in right of payment over any and all other obligations, liabilities and indebtedness of the Debtor, whether now in existence or incurred by the Debtor after the Petition Date, and over any and all administrative expenses or priority claims of the kind specified in, or ordered pursuant to, <i>inter alia</i>, Sections 105, 326, 328, 330, 331, 503(b), 507(a), 364(c)(1), or 726 of the Bankruptcy Code, provided, however, that the DIP Lender's Super Priority Claim shall be subject and subordinate to the Carve-Out and IBTX Expenses.</li> </ul>
<b>Payment Terms</b>	<ul style="list-style-type: none"> <li>Unless and until the earlier of (i) the date on which the Plan<sup>5</sup> becomes effective, and (ii) the date on which all outstanding indebtedness and other obligations owed or owing by the Debtor to IBTX have been indefeasibly paid in full, the Debtor and its estate shall only be obligated to pay accrued interest on the DIP</li> </ul>

<sup>3</sup> "Cash Collateral Order" means and refers to that certain Final Agreed Order Authorizing Limited Use of Cash Collateral and Granting Adequate Protection entered at Docket No. 71 in this case.

<sup>4</sup> "IBTX Expenses" means and refers to (i) interest payable to IBTX pursuant to the Cash Collateral Order; and (ii) fees and expenses of IBTX payable under the terms and conditions of the Cash Collateral Order.

<sup>5</sup> "Plan" means and refers to the Debtor's Second Amended Plan of Reorganization filed at Docket No. 69 in this case. The Plan provides for New Shares of the Reorganized Debtor to be issued to the DIP Lender on the Plan's Effective Date in full and final satisfaction of the DIP Loan Claim.

	Financing on a monthly basis.
<b>Adequate Protection of IBTX Interests</b>	<ul style="list-style-type: none"> <li>As and for adequate protection of IBTX's interests, and in consideration of its consent to the DIP Financing: (i) the outstanding principal balance of the IBTX loan will be paid down to \$2,800,000 immediately upon the closing of the DIP Financing (the "IBTX Loan Paydown"); and (ii) to the extent of any diminution in value to IBTX's interests, after taking into account the IBTX Loan Paydown, caused by the grant of DIP Lender Liens and the DIP Lender Super Priority Claim to the DIP Lender, IBTX will be granted (A) valid, perfected, junior liens, subject and subordinate in priority and payment only to the DIP Lender Liens, the Existing IBTX Liens and the Carve-Out, on all existing and after acquired property of the Debtor and the Debtor's estate (the "IBTX DIP Financing Replacement Liens"), and (B) an allowed super priority administrative claim pursuant to Sections 361, 363(e) and 507(a)(2) and (b) of the Bankruptcy Code (the "IBTX DIP Financing Super Priority Claim"), having priority in right of payment over any and all other obligations, liabilities and indebtedness of the Debtor, whether now in existence or incurred by the Debtor after the Petition Date, and over any and all administrative expenses or priority claims of the kind specified in, or ordered pursuant to, <i>inter alia</i>, Sections 105, 326, 328, 330, 331, 503(b), 507(a), 364(c)(1), or 726 of the Bankruptcy Code, provided, however, that the IBTX DIP Financing Super Priority Claim shall be subject and subordinate to the DIP Lender's Super Priority Claim and the Carve-Out.</li> </ul>
<b>Exit Financing</b>	<ul style="list-style-type: none"> <li>Upon the Effective Date of the Plan, the DIP Lender shall provide the Reorganized Debtor an additional \$500,000.00 to effectuate its Plan and to provide additional funds for the Reorganized Debtor's ongoing operations. These additional funds will be an equity infusion into the Reorganized Debtor, not in the form of a loan, to be used in accordance with the Budget attached hereto as Exhibit "A". Within three months after the Effective Date of the Plan, the DIP Lender shall provide a final \$250,000.00 to the Reorganized Debtor as an additional equity infusion.</li> </ul>

9. Attached hereto as **Exhibit "A"** is a budget (the "DIP Budget") for the use of the proceeds from the DIP Loan.

**RELIEF REQUESTED**

10. The Debtor seeks entry of an order (i) authorizing the Debtor to incur the DIP Financing and use such financing pursuant to the terms of the DIP Budget; and (ii) approving the

security to be granted to the DIP Lender and the means of providing adequate protection to IBTX proposed herein and as set forth in the attached proposed order (the “DIP Order”).

**ARGUMENT AND AUTHORITY**

11. Pursuant to section 364(c) of the Bankruptcy Code, a debtor may incur DIP financing:

(c) If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt:

(1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;

(2) secured with a lien on property of the estate that is not otherwise subject to a lien; or

(3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 363(c). Section 364(d)(1) further provides:

(d)(1) the Court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if:

(A) The trustee is unable to obtain such credit otherwise; and

(B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

11 U.S.C. § 364(d)(1).

12 Accordingly, section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority financing. 11 U.S.C. § 364. Courts grant a debtor considerable deference in the exercise of its sound business judgment in obtaining such credit. *See Grp. of Institutional Investors v. Chicago, Mil., St. P., & Pac. R.R. Co.*, 318 U.S. 523, 550 (1943); *In re DB Capital Holdings, LLC*, 454 B.R. 804, 822 (Bankr. D. Colo. 2011); *In re Phase-I Molecular Toxicology Inc.*, 285 B.R. 494, 495 (Bankr. D.N.M. 2002); *In re W. Pac. Airlines, Inc.*, 223 B.R.

567, 572 (Bankr. D. Colo. 1997); *In re Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (noting that approval of postpetition financing requires, *inter alia*, an exercise of “sound and reasonable business judgment”).

13 The Debtor submits that entry into the DIP Financing is a sound exercise of its business judgment. The Debtor is unable to obtain unsecured credit or DIP Financing on better terms than that offered by the DIP Lender. Further, the DIP Financing provides the Debtor with a viable reorganization strategy as the DIP Financing will be converted into equity and the DIP Lender will provide additional capital to fund the Debtor’s operations after emergence from bankruptcy.

14 The Debtor further submits that the interests of IBTX are adequately protected. A debtor must provide adequate protection to pre-petition secured creditors in order to obtain post-petition superpriority financing. *See In re Swedeland Development Group, Inc.*, 16 F.3d 552, 564 (3d Cir. 1994); *In re Crouse Group, Inc.* 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987). IBTX is being provided the IBTX Loan Paydown, the IBTX DIP Financing Replacement Liens, and the IBTX DIP Financing Super Priority Claim as adequate protection of its interests. Based upon such provision of adequate protection, coupled with the DIP Financing payment terms described above and the terms proposed under the Debtor’s Plan, IBTX has consented to the terms of the DIP Financing and the liens proposed to be granted herein. Further, the DIP Financing will be used to fund operations and develop additional producing assets, thereby enhancing the value of IBTX’s existing collateral. Accordingly, the Debtor submits the DIP Financing should be approved.

**CONCLUSION**

WHEREFORE, PREMISES CONSIDERED, Ginger Oil Company, Debtor-in-Possession herein, respectfully requests that the Court enter the DIP Order authorizing the DIP Financing, and for such other and further relief, at law and in equity, as this Court deems just.

**COOPER & SCULLY, PC.**

By: /s/ Julie M. Koenig  
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Attorneys' for the Debtor

**Certificate of Service**

I hereby certify that a true and correct copy of the foregoing has been served on all of the parties on the attached service list, including parties requesting notice, via either ECF Notification or by first class mail, proper postage affixed, on the 11<sup>th</sup> day of July, 2016.

By: /s/ Julie M. Koenig  
Julie M. Koenig



Label Matrix for local noticing  
0541-4  
Case 16-30678  
Southern District of Texas  
Houston  
Wed Mar 16 13:35:56 CDT 2016

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Montgomery County  
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Houston, TX 77253-3064

Weiser-Brown Operating Company  
TRENT L. ROSENTHAL, P.L.L.C.  
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(p)INTERNAL REVENUE SERVICE  
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Internal Revenue Service  
Insolvency Department  
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The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Internal Revenue Service  
1919 Smith St.  
Stop 5024 HOU  
Houston, TX 77002

(d)Internal Revenue Service  
STOP 6692 AUSC  
Austin, TX 73301-0030

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Independent Bank

(u)The Woodlands Road Utility District # 1

(u)Leases and Contracts

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Mailable recipients 35  
Bypassed recipients 3  
Total 38