

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

In re:

MERCHANT BANKCARD SERVICES  
OF AMERICA, INC.,  
Debtor.

Chapter 11  
Case No. 16-13224-JNF

**SIXTH STIPULATED INTERIM ORDER CONTINUING DEBTOR'S MOTION FOR  
AUTHORITY TO USE CASH COLLATERAL, APPROVING FURTHER POST-  
PETITION FINANCING, AND  
GOVERNING DEBTOR'S USE OF FUNDS**

Upon ongoing consideration of the Debtor's Motion for Authority to Use Cash Collateral (the "Motion") dated August 18, 2016, and the Secured Creditor Davos Financial Corp.'s ("Davos") Opposition thereto (the "Opposition"), dated August 22, 2016, the Debtor and Davos having agreed to the terms of an initial Stipulated Interim Order Continuing Debtor's Motion For Authority To Use Cash Collateral ("First Interim Order"), which this Court entered on August 24, 2016; the Debtor and Davos having agreed to the terms of a Second Stipulated Interim Order Continuing Debtor's Motion For Authority To Use Cash Collateral ("Second Interim Order"), which this Court entered on September 2, 2016; the Debtor and Davos having agreed to the terms of a Third Stipulated Interim Order Continuing Debtor's Motion For Authority To Use Cash Collateral ("Third Interim Order"), which this Court entered on September 23, 2016 following the filing the same day of the Debtor's Emergency Motion for Entry of Order Authorizing Post-Petition Financing in Conjunction with Approval of Proposed Third Stipulated Interim Order Continuing Debtor's Motion for Authority to Use Cash Collateral and Governing Debtor's Use of Funds; the Debtor and Davos having agreed to the terms of a Fourth Stipulated

Interim Order Continuing Debtor's Motion for Authority to Use Cash Collateral, Approving Further Post-Petition Financing, and Governing Debtor's Use of Funds ("Fourth Interim Order"), which this Court entered on October 24, 2016; the Debtor and Davos having agreed to the terms of a Fifth Interim Order Interim Order Continuing Debtor's Motion for Authority to Use Cash Collateral, Approving Further Post-Petition Financing, and Governing Debtor's Use of Funds ("Fifth Interim Order"), which this Court entered on November 16, 2016; and a further continued interim hearing on the Motion and Opposition having been held on November 29, 2016, at which the Debtor and Davos reported that they had reached a further limited agreement, subject to that agreement being documented, it is hereby

ORDERED, ADJUDGED AND DECREED that:

1. With respect to the funds remitted or expected to be remitted to Davos by Pivotal Payments, Inc. ("Pivotal") during the week of November 28, 2016 (which funds are anticipated to aggregate approximately \$ 17,000) (the "November Pivotal Payment"), subject to and without waiver of all of Davos's rights, including without limitation as specified below, and given Davos's willingness to provide further debtor-in-possession financing to the Debtor solely as set forth herein, Davos shall promptly following receipt of the November Pivotal Payment remit the entirety of that payment to the Debtor on the terms set forth below, solely for the Debtor to make payments, through December 15, 2016 only, consistent with the terms of this Order and the budget attached as Exhibit A to the Fifth Interim Order. Davos's agreement to remit the November Pivotal Payment to the Debtor on these terms is subject to and without waiver of: (a) Davos's position that the entirety of the November Pivotal Payment is Davos's property, not property of the bankruptcy estate; (b) Davos's position that, having exercised its rights as a secured creditor vis-à-vis the Debtor and Pivotal prior to the filing of the Debtor's bankruptcy petition, Davos holds a property right in the full amount of the November Pivotal Payment, and any property right the Debtor might have had in those funds or any portion thereof has been extinguished; and (c) except as set forth below, the Debtor's position that up to 60 percent of the

November Pivotal Payment is property of the bankruptcy estate; provided, however, that as set forth in the Second, Third, Fourth, and Fifth Interim Orders and further acknowledged herein, the Debtor concedes that at least some portions of the revenues received and to be received from the “MFS Merchant Portfolio,” the “DSI Merchant Portfolio,” and the “MCMG Merchant Portfolio,” as defined in asset purchase and settlement agreements between the Debtor and Davos’s assignor Davos Leasing Co. dated March 21, 2014, January 23, 2015, and June 5, 2015 (collectively, the “Three Portfolios”), including without limitation the revenues funding the Second November DIP Loan (as defined below), are not property of the Debtor’s bankruptcy estate.

2. With respect to the November Pivotal Payment, forty percent thereof (the “Second November DIP Loan”) shall be treated as a secured post-petition loan from Davos to the Debtor pursuant to 11 U.S.C. § 364, Federal Rule of Bankruptcy Procedure 4001 and Local Bankruptcy Rule 4001-2. Except as set forth in paragraph 7 below, (a) the Debtor and Davos agree to defer determination as to the treatment of the remainder of the November Pivotal Payment that Davos transfers to the Debtor hereunder, and (b) all rights of both parties are fully reserved with respect to any arguments concerning such treatment. If it becomes necessary for the issue to be litigated, and the Court subsequently determines that some or all of the remainder is Davos’s property, and not property of the estate, the remainder (or as much of the remainder as is determined to be Davos’s property) shall also be treated as a secured post-petition loan from Davos to the Debtor, on the same terms as the secured post-petition loan of the 40 percent. Any amount of the November Pivotal Payment that is treated as a secured post-petition loan, including at least forty percent thereof, shall be subject to the following terms and conditions:

- a. The interest rate shall be the three month LIBOR rate plus three percent per annum, and interest shall accrue as of the last day of each calendar month starting with December 2016;
- b. The maturity date shall be the earliest of (a) the effective date of a plan of reorganization, (b) the closing on a sale of all of any or all interests in the

Three Portfolios; (c) the closing on a sale of all or substantially all of the assets of the Debtor, and (d) March 31, 2017 (the "Maturity Date");

- c. The proceeds of the Second November DIP Loan shall be used only to make budgeted payments in accordance with this Order and Exhibit A to the Fifth Amended Order;
- d. Events of default shall include (i) failure to repay the loan in full on or before the Maturity Date; (ii) the filing of a reorganization plan that fails to repay the Second November DIP loan and/or the loans approved by the Third, Fourth and/or Fifth Interim Orders in full immediately upon the plan effective date; (iii) the payment of any indebtedness arising before the filing of the Debtor's bankruptcy petition except as consented to by Davos or permitted by order of the Court; (iv) the dismissal of the Bankruptcy Case, conversion to Chapter 7, or appointment of a Trustee; (v) violation by the Debtor of this Order or any subsequent order concerning the treatment of any loan(s) by Davos to the Debtor; and (vi) failure of the Debtor's shareholder to make the capital contribution set forth in paragraph 15 of the Fifth Interim Order.
- e. The Second November DIP Loan shall at all times be secured by an automatically perfected first- priority lien on all property and assets of the Debtor; and
- f. The Second November DIP Loan shall at all times constitute an allowed administrative expense claim in the Bankruptcy Case with priority over all administrative expense claims and unsecured claims against the Debtor of any kind or nature.

3. The Debtor will make no other disbursements beyond those authorized by this Order without further Court order. Without limiting the generality of the preceding sentence, the Debtor shall make no payments to agents or any other person or entity on account of pre-petition

claims, no payments to its affiliate TenderCard, and no further salary payments to its owner/president.

4. Except with respect to the Second November DIP Loan, nothing in this Order shall obligate Davos to lend any funds to the Debtor. Nor shall anything in this Order obligate Davos to remit to the Debtor any payments or anticipated payments from TSYS Merchants Solutions, LLC ("TSYS") or Pivotal other than the November Pivotal Payment, or consent to the Debtor's use of any such payments, absent a further order from this Court.

5. Should Davos remit any or all of the November Pivotal Payment to the Debtor prior to execution of this Stipulation and/or approval of this Stipulation as an order of this Court, that will be subject to and without waiver of all of Davos's rights, and the Debtor will not assert that Davos waived any rights with respect to the November Pivotal Payment or Second November DIP Loan (or the amounts thereof or any portions thereof or corresponding revenues) or consented to its or their use by the Debtor prior to entry of an order approving this Stipulation. The Debtor will not disburse any of the November Pivotal Payment or Second November DIP Loan or the proceeds thereof prior to approval of this Stipulation as an order of this Court or entry of another order authorizing its use.

6. As a condition of the Second November DIP Loan, the Debtor shall under the supervision of the Examiner actively pursue a Section 363 sale of substantially all of its assets, including its interests in the Three Portfolios, with a purchase and sale agreement to be executed by December 31, 2016, provided that the Three Portfolios may not be sold without Davos's consent. The Debtor further agrees not to pursue a reorganization as an alternative to a sale.

7. In connection with the distribution of any sale proceeds, Davos's rights in the Three Portfolios, the income streams therefrom, as a first-priority secured creditor, as a secured debtor-in-possession lender, and a super-priority administrative claimant shall be honored and enforced. In the event that a sale of one or more of the Three Portfolios is closed, 100 percent of the amount of the September Pivotal Payment (as defined in the Third Interim Order), 100

percent of the October Processor Payments (as defined in the Fourth Interim Order), 100 percent of the November TSYS Payment (as defined in the Fifth Amended Order), and 100 percent of the November Pivotal Payment will be treated as Davos's property and having been debtor-in possession financing (except for the amount of the October Processor Payments retained by Davos and the amount of the November TSYS Payment retained by Davos), subject to the applicable terms and conditions of the Third, Fourth, and Fifth Interim Orders and this Order.

8. As a condition of the Second November DIP Loan, the Debtor and its affiliate TenderCard will upon ten days' notice submit to Rule 2004 examinations by Davos (which may be combined into one examination) concerning the relationship between these two entities, including providing documents before the examination(s) that are reasonably requested by Davos.

9. Except as to 40 percent of the November Pivotal Payment, the treatment of which the Debtor and Davos have agreed upon herein, and except as set forth in paragraph 7 hereof in the event of a sale, nothing in this Order constitutes a finding or ruling regarding whether any portion of the November Pivotal Payment constitutes Davos's property or property of the Debtor's bankruptcy estate, whether any of the funds or amounts referenced in this Order, the First Interim Order, the Second Interim Order, the Third Interim Order, the Fourth Interim Order, the Fifth Interim Order, any budget attached to any of the Interim Orders, the Motion, the Opposition, the Financing Motion, or at any hearing in this case, or any portions thereof, constitute cash collateral rather than Davos's property; whether the Debtor may use any cash collateral and if so to what extent; whether there is adequate protection for any such use; or the appropriate nature and amount of such adequate protection; provided that nothing in this Order is intended to alter any determinations made in any of the four prior Interim Orders. Should any such funds, amounts or portions thereof be determined to be cash collateral, Davos shall be entitled, retroactively and prospectively, to adequate protection on terms at least as favorable to Davos as proposed in the Motion, subject to Davos's right to seek and the Debtor's right to

oppose additional such protection. Beyond the rights conferred to Davos or recognized hereunder as to 40 percent of the November Pivotal Payment, in the Third Interim Order as to 40 percent of the September Pivotal Payment, in the Fourth Interim Order as to 40 percent of the October Processor Payments, and in the Fifth Interim Order as to 40 percent of the November TSYs Payment, Davos reserves the rights to argue, among other things, that the Debtor must pay or repay Davos during this Chapter 11 case any amounts addressed by this Order, the First Interim Order, the Second Interim Order, the Third Interim Order, the Fourth Interim Order, and/or the Fifth Interim Order and disbursed to or by the Debtor that are determined to be or have been Davos's property. Davos also reserves the rights to assert that the amount of its secured claim is increased by these amounts. Except as set forth herein, including without limitation in paragraph 7, the Debtor reserves the right to oppose these arguments and assertions; provided, however, that to the extent that any such amounts constitute Davos's property, and not property of the bankruptcy estate, the Debtor agrees not to object to treatment of these amounts as a secured post-petition loan or to any administrative claim of any priority for these amounts.

10. With respect to payments from Pivotal and TSYs, such payments shall continue to be received in the first instance by Davos, which shall immediately upon receipt of such payments wire to the Debtor any amount(s) that Davos has agreed to remit to the Debtor, using the wire instructions the Debtor provided pursuant to the First Interim Order. Either or both the Debtor and Davos may bring this paragraph of this Order to the attention of TSYs and/or Pivotal.

11. Nothing in this Order shall obligate Davos to remit to the Debtor any payments or anticipated payments from TSYs or Pivotal absent a further order from this Court, except with respect to the November Pivotal Payment.

12. This Order is subject to and without waiver of Davos's rights to assert, among other things, that the amount of its secured claim is increased by amounts that Davos remits or remitted to the Debtor pursuant to this Order and the First, Second, Third, Fourth, and Fifth

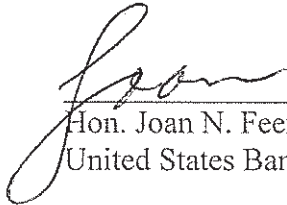
Interim Orders, or is increased on account of post-petition credit card sales or corresponding residual payments, or to seek other relief pertaining to any or all of those amounts, sales or payments.

13. A further interim hearing on the Motion and the Opposition is scheduled for December 16, 2016 at 11:00 a.m. In advance of that hearing, the Examiner shall report to the Debtor and Davos regarding possible payroll reductions by the Debtor.

SO ORDERED BY THE COURT:

Dated: Dec. 16, 2016

*effective Nov. 30, 2016*

  
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Hon. Joan N. Feeney  
United States Bankruptcy Judge