



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

ENTERED
05/14/2014

In re:	§	Chapter 11
TMT PROCUREMENT CORP., et al.¹	§	Bankruptcy Case No. 13-33763
Debtors.	§	Jointly Administered

**AGREED ORDER AMENDING FINAL ORDER (I) AUTHORIZING
POST-PETITION SECURED FINANCING TO B MAX CORPORATION
AND (II) PROVIDING RELATED RELIEF WITH RESPECT THERETO**

Whereas, on March 10, 2014, this Court entered the Final Order (I) Authorizing Post-Petition Secured Financing to B Max Corporation and (II) Providing Related Relief With Respect Thereto [Docket No. 1203] (the “B Max DIP Order”); and

Whereas, the B Max DIP Order contemplated that the B Max DIP Lender would finance a settlement by B Max with an entity (the “Cargo Claimant”) that had arrested the Vessel in Fangcheng Port, China pursuant to an order issued by the Behai Maritime Court (China) over a dispute concerning the condition of certain cargo shipped on behalf of the Cargo Claimant by B Max and that such settlement would permit the release of the Vessel² from arrest and the Chinese Admiralty Proceeding; and

Whereas, B Max has now reached a settlement with the Cargo Claimant (the “Cargo Settlement”) and the settlement agreement in the form previously provided to the B Max DIP

¹ The debtors (collectively, the “Debtors”) in these chapter 11 cases (collectively, the “Chapter 11 Cases”) are: (1) A Whale Corporation; (2) B Whale Corporation; (3) C Whale Corporation; (4) D Whale Corporation; (5) E Whale Corporation; (6) G Whale Corporation; (7) H Whale Corporation; (8) A Duckling Corporation; (9) F Elephant Inc.; (10) A Ladybug Corporation; (11) C Ladybug Corporation; (12) D Ladybug Corporation; (13) A Handy Corporation; (14) B Handy Corporation; (15) C Handy Corporation; (16) B Max Corporation; (17) New Flagship Investment Co., Ltd; (18) RoRo Line Corporation; (19) Ugly Duckling Holding Corporation; (20) Great Elephant Corporation; and (21) TMT Procurement Corporation. Collectively, all of the Debtors other than B Max are called the “Affiliated Debtors”, and are each an “Affiliated Debtor”.

² Any capitalized term used but not defined herein shall have the term ascribed to it in the B Max DIP Order.

Lender, with any changes as the Applicable Parties agree to in their sole discretion, the “Settlement Agreement”); and

Whereas, in accordance with paragraph 11 of that certain Omnibus Designee Order [Docket # 1443], the B Max DIP Lender may, at its sole discretion and due to the occurrence of one or more termination events or events of default, terminate any and all of its obligations under the B Max DIP Order, including without limitation, to provide the B Max DIP Facility; and

Whereas, in accordance with clause (i) of paragraph 2.a of the B Max DIP Order, the Existing DIP Lender has acknowledged that it does not (and will not) object to the B Max DIP Order in any manner or challenge the findings contained in paragraph J of the B Max DIP Order; and

Whereas, the B Max DIP Lender, B Max, the Committee, and the Existing DIP Lender (collectively, the “Applicable Parties”) desire to amend the terms of the B Max DIP Order to, among other things, effectuate the Cargo Settlement and to consummate the other transactions contemplated by the B Max DIP Order:

NOW THEREFORE, the Applicable Parties agree, and the Court hereby orders, as follows:

1. The outside date for the occurrence of the Effective Date as set forth in paragraph 2.a of the B Max DIP Order is extended to the later to occur of (i) 5:00 p.m. (prevailing time, Houston, Texas) on May 30, 2014 and (ii) such later date and time as may be agreed in writing by all of the Applicable Parties without further order of the Court. B Max shall promptly execute the Settlement Agreement upon entry of this Agreed Order and shall use commercially reasonable efforts to effectuate the Cargo Settlement on the terms and conditions

contained therein. No affiliate of B Max (including any Affiliated Debtor or non-Debtor affiliate of B Max or any direct or indirect equity holder of any of the Debtors) shall take any action that interferes with the entry into and effectuation of the Cargo Settlement. The Effective Date of the B Max DIP Order shall occur upon the execution of the Settlement Agreement by the parties thereto and any related documentation embodying and effectuating the Cargo Settlement, provided that the foregoing occurs no later than the outside date referred to in the previous sentence. The Debtors shall thereupon immediately file a notice on the Court's docket acknowledging the occurrence of the Effective Date.

2. Paragraph 3.a of the B Max DIP Order is amended to provide in full as follows, and the following shall override any other inconsistent provisions of the B Max DIP Order:

- a(1) Upon occurrence of the Effective Date, B Max shall be deemed to have submitted a funding request in an amount necessary to (X) satisfy the Cargo Settlement (the "Cargo Settlement Payment"), (Y) pay for any necessary bunkers and port charges (each as more particularly identified in the B Max DIP Budget) and (Z) make the Existing DIP Lender Repayment; such funds will be provided to (i) B Max (for bunkers, port charges and the Existing DIP Lender Repayment) and (ii) B Max's Chinese counsel (in case of the Cargo Settlement Payment), in each case within three (3) business days of receipt of the funding request by the B Max DIP Lender (provided the conditions for funding are otherwise satisfied), provided, first, that the mortgage securing the B Max DIP Obligations shall have been duly filed in the registry of the Marshall Islands in form and substance satisfactory to the B Max DIP Lender. The Existing B Max Lenders and the Existing B Max DIP Lender are deemed to have consented to same in accordance with paragraph M of the B Max DIP Order and they shall execute such documents (if any) as are reasonably necessary under Marshall Islands law to evidence their consent. Upon recordation of the B Max DIP Facility as a Preferred Mortgage with the vessel registry of the Marshall Islands, the Preferred Mortgage in favor of the existing B Max Lenders shall be subordinated in the vessel registry of the Marshall Islands to the Preferred Mortgage in favor of the B Max DIP Lenders as defined on p. 1 of the B Max DIP Order [Docket No. 1203]. The Cargo Settlement Payment shall be paid

into escrow with the Chinese counsel to B Max, for conversion from U.S. Dollars to local currency (i.e., Chinese Remninbi) and transmittal to the Cargo Claimant in accordance with the terms of the Settlement Agreement. Upon receipt of the funds described in (Z) above by B Max from the B Max DIP Lender, B Max shall promptly make the Existing DIP Lender Repayment to the Existing DIP Lender.

- a(2) At any time after the making of the Existing DIP Repayment, B Max shall be entitled to draw the remainder of the Initial Amount and the Subsequent Amount in accordance with the terms of the B Max DIP Order.
- a(3) If the Settlement Agreement terminates in accordance with its terms and the Vessel is not released from arrest, an Event of Default under the B Max DIP Order shall occur. In such instance, if (and when) the Cargo Settlement Payment is returned to B Max, then B Max shall immediately repay such amount in full to the B Max DIP Lender as a partial repayment of the B Max DIP Obligations; provided, that the Existing DIP Lender shall retain the Existing DIP Lender Repayment and all rights and remedies under the Existing DIP Order with respect to B Max.

3. The first sentence of paragraph 3.e of the B Max DIP Order is modified to insert the words “(and, in accordance with footnote 3 of this Order, to the extent not paid all such amounts shall be treated as B Max DIP Obligations for all purposes under this Order)” after the word “pay.”

4. The following shall be added as paragraph 6.h in the B Max DIP Order:
“The allowed fees and expenses of Bracewell & Giuliani, AlixPartners, Seward & Kissel and FTI Consulting, in each case incurred as estate professionals after May 6, 2014 in furtherance of the effectuation of this Order and the Settlement Agreement, including in connection with the sale of the Vessel as contemplated hereby, shall be advanced as B Max DIP Obligations to the extent not paid through repayment of the synthetic revolver from proceeds of the sale of the Vessel; provided, that such amounts shall not exceed \$100,000 without the consent of the B Max DIP Lender; provided, further, that the B Max DIP Lender may at any time give a notice to

counsel for the Debtors terminating such funding, after which no fees and expenses incurred after such date shall be payable or advanced as B Max DIP Obligations.

5. The second sentence of paragraph 22 of the B Max DIP Order is modified to insert the words “in each case, at the same time as the closing of such sale: after the word “applied.”

6. Paragraph 24.e of the B Max DIP Order is modified to insert the words “(which shall not include the Designee)” after the words “responsible person.”

7. Paragraph 24.n of the B Max DIP Order is modified to insert, at the very end of such paragraph, the words “or is placed or identified on: (i) the Specially Designated Nationals and Blocked Persons List published by the Office of Foreign Assets Control of the U.S. Department of the Treasury; or (ii) any other similar list maintained by any office, department, agency, or branch of the Government of the United States.”

8. The revised budget as provided to the Applicable Parties on the date of execution of this Agreed Order by the Applicable Parties (as the same may be amended, supplemented, extended or otherwise modified in accordance with paragraph 5.b of the B Max DIP Order), shall serve as the “B Max DIP Budget” for all purposes under the B Max DIP Order.

9. Notwithstanding anything to the contrary in the B Max DIP Order (including, without limitation, paragraph 3.b), the B Max DIP Lender shall be authorized to advance funds, without further order of the Court and without the need for any funding requests from B Max, to pay for operating and sale related-expenses and any expenses in connection with the Cargo Settlement, in accordance with the B Max DIP Budget or as otherwise deemed

reasonably necessary by the B Max DIP Lender upon consultation with the Committee and the Existing DIP Lender, and any amounts so advanced shall be deemed drawn under the B Max DIP Facility and shall be deemed B Max DIP Obligations for all purposes hereunder; provided, further, that the total amount that may be advanced under the B Max DIP Facility shall not exceed \$3.4 million in principal amount.

10. The B Max DIP Order, as amended by this Agreed Order, is in full force and effect. This Agreed Order is hereby deemed immediately effective pursuant to Bankruptcy Rule 6004(h).

SO ORDERED as of this 14 day of May, 2014



MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE