

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

ESSAR STEEL MINNESOTA LLC and
ESML HOLDINGS INC.,¹

Debtors.

Chapter 11

Case No. 16-11626 (BLS)

(Jointly Administered)

Hearing Date: April 5, 2017 at 1:30 p.m. (Proposed)
Objections Due: TBD (Expedited Hearing Requested)

**DEBTORS' MOTION, PURSUANT TO SECTIONS 105(a) AND 363(b)(1) OF
THE BANKRUPTCY CODE, FOR AN ORDER AUTHORIZING THE DEBTORS
TO RECOMMENCE CONSTRUCTION ACTIVITIES ON THE PROJECT**

Mesabi Metallics Company LLC (f/k/a Essar Steel Minnesota LLC) (“**Mesabi**”) and ESML Holdings Inc. (“**Holdings**,” and, together with Mesabi, the “**Debtors**”), as debtors and debtors in possession in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), hereby file this motion (the “**Motion**”) for entry of an order, pursuant to sections 105(a) and 363(b) of title 11 of the United States Code (the “**Bankruptcy Code**”), for entry of an order, substantially in the form attached hereto as **Exhibit A**, authorizing them to recommence construction activities on the Project.² In support of the Motion, the Debtors respectfully represent:

I. PRELIMINARY STATEMENT

The Debtors bring this Motion in order to preserve substantial value and materially enhance the value of their assets to the Plan Sponsor (or potential bidder) at a relatively low cost

¹ Essar Steel Minnesota LLC has changed its name to Mesabi Metallics Company LLC. The last four digits of its federal taxpayer identification number are 8770. The last four digits of ESML Holdings Inc.’s federal taxpayer identification number are 8071.

² Where the context requires, each capitalized term used but not otherwise defined herein shall have the meaning ascribed to such term in the *First Amended Chapter 11 Plan of Reorganization of Mesabi Metallics Company LLC (f/k/a Essar Steel Minnesota LLC) and ESML Holdings Inc.* [D.I. 810] (the “**Plan**”).

to the Debtors. The investment contemplated herein is an easy call for the Debtors and clearly satisfies the business judgment standard applicable to their request.

As provided in the Debtors' Plan currently on file with the Court, the Debtors propose to reorganize their iron ore mine and production facility Project and to use the value of the Project (together with the Litigation Trust) to provide recoveries to Creditors. The construction authorization in Mesabi's current air permit may be imperiled if the company is not engaged in active construction as of June 1, 2017. If Mesabi is at risk of losing, or actually does lose, this permit, it will materially reduce the value of the Project. Importantly, the delay could be substantial and preclude further construction at the project site for years. The Plan Sponsor and other potential investors would consider the risk and delay associated with obtaining a new air permit in valuing the Project and determining their willingness to invest in the reorganization of the Debtors.

Accordingly, in order to maximize the value of the Project, the Debtors hereby seek authority to enter into contracts and use up to \$5 million of debtor-in-possession financing or cash collateral to fund construction activities at their project site. Doing so will not only preserve value by protecting the Debtors' air permit, but it will also enhance value by advancing the project further towards completion and providing the Reorganized Debtor with the ability to carry forward this momentum following confirmation of the Plan. Ensuring that major progress can be made in calendar year 2017 is extremely valuable in ensuring completion of the Project. Such value will inure to the Debtors' estates and help to maximize Creditor recoveries in the Chapter 11 Cases.

For these reasons and as further stated below, the Debtors request that the Court grant this Motion.

II. BACKGROUND

A. General Background

1. On July 8, 2016 (the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 the Bankruptcy Code, thereby commencing the Chapter 11 Cases. The Chapter 11 Cases are jointly administered.

2. The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. On July 19, 2016, the United States Trustee constituted an official committee of unsecured creditors (the “**Committee**”). No trustee or examiner has been requested or appointed.

4. Information regarding the Debtors’ businesses, capital structure, and the circumstances leading to the commencement of the Chapter 11 Cases is set forth in the *Declaration of Sanjay Bhartia in Support of First Day Motions and Applications* (the “**First Day Declaration**”) [D.I. 14].

5. On February 2, 2017, the Debtors filed their first proposed chapter 11 plan of reorganization [D.I. 690] and related disclosure statement [D.I. 691].

6. On March 14, 2017, the Debtors filed the *First Amended Chapter 11 Plan of Reorganization for Mesabi Metallics Company LLC (f/k/a Essar Steel Minnesota LLC) and ESML Holdings Inc.* [D.I. 810] (as amended from time to time, the “**Plan**”) and related disclosure statement [D.I. 808] (as amended from time to time, the “**Disclosure Statement**”). The Court approved the Disclosure Statement by order [D.I. 817] dated March 17, 2017.

7. A hearing to consider confirmation of the Plan is presently scheduled for April 26, 2017 at 9:30 a.m. (the “**Confirmation Hearing**”).

B. Background Specific to this Motion

8. Mesabi is a project company formed to develop and operate a fully integrated iron ore pellet production facility (the “**Project**”) in the western Mesabi Range in northern Minnesota. First Day Decl., ¶ 6.

9. Mesabi contracted with certain affiliates to build the Project. Those affiliates, however, failed to perform the work in accordance with the terms of the applicable agreements. Major construction activity slowed in late 2015, and substantially ceased in early 2016, leaving the Project substantially incomplete. The Project has remained mostly idle ever since.

10. Following suspension of construction activities, Mesabi worked to develop an alternative path to completion of the Project. Those efforts failed to yield any solution as of July 2016 and the Debtors were forced to seek chapter 11 protection in order to forestall termination of a key mining lease and preserve value for their creditors.

11. The Debtors have obtained the Court’s approval of a disclosure statement and have commenced solicitation on the proposed Plan, which would provide recoveries to Creditors significantly in excess of the recoveries that they would receive in liquidation. The recoveries offered by the Plan are possible only if the Debtors preserve all value and are able to reorganize the Project and related assets (collectively, the “**Project Assets**”) in these Chapter 11 Cases. Because the Debtors lack the resources to complete the Project, they have proposed to reorganize by eliminating the Equity Interests, reducing Claims, and issuing New Membership Interests to the Plan Sponsor or such other person providing a higher and better offer.

12. The Debtors have determined that it is essential that they recommence construction on the Project to preserve its value and, in turn, maximize the return to the Debtors' Creditors. Importantly, as described in the Disclosure Statement, the Minnesota Pollution Control Agency (the "**MPCA**") has taken the position that the Debtors must recommence construction on the project prior to June 1, 2017 in order for Mesabi's construction authorization to remain valid. Disclosure Statement, 56. Mesabi's construction authorization is part of an air permit that authorizes Mesabi to construct and operate the Project as permitted. Based on the determination made by the MPCA, if Mesabi fails to restart construction by June 1, 2017, it risks losing its air permit. Due to the multi-year process of obtaining a new permit, the Debtors believe that such a scenario would severely dampen interest in the Project Assets and potentially eliminate the reorganization value and prospects of a successful reorganization.

13. Accordingly, by this Motion, the Debtors request authority to enter into contracts in an aggregate value of up to \$5 million to recommence construction on the Project, subject to availability under their postpetition debtor-in-possession facility (the "**DIP Facility**") from SPL Advisors LLC (the "**DIP Lender**") and any supplemental DIP facility or agreed use of cash collateral. The highest priority construction items that the Debtors intend to pursue first (the "**Proposed Work**") include (1) installation of the slurry pipeline and related work; (2) installation of equipment, building steel and ductwork in the induration building; (3) installation of the tailings pipeline and related work; and (4) installation of the tailings bridge over the highway that bisects the project.

14. In order to avoid the risk identified by the MPCA's position regarding the permit, it is critical for Project construction to restart by early May. By June 1, 2017, Mesabi must notify the Minnesota Pollution Control Agency whether it has restarted construction and, if so,

provide a description of the construction activities performed. The Debtors are advised that contractors require approximately one-month before commencing work to obtain necessary construction machinery and to employ workers. Therefore, in order to provide the requisite documentation to the MPCA, contractors will need to mobilize in April and construction will need to start in May 2017. As such, the Debtors request relief on an emergency basis so that they can enter into contracts and begin to mobilize contractors in early April.

15. There is sufficient capacity under the DIP Facility to fund the mobilization expenditures required prior to the Confirmation Hearing for the Proposed Work. If the Plan is not confirmed at the Confirmation Hearing, it is likely that construction at the Project will remain suspended and will not restart in early May. If the Plan is confirmed, construction will continue through the effective date of the Plan, subject to the Debtors' ability to obtain sufficient financing for the Proposed Work. However, to make this possible, the Debtors must enter into contracts with and pay certain mobilization costs to contractors in early April in order to allow sufficient time for the contractors to mobilize. The Debtors therefore request authority to contract for and commence the Proposed Work **subject to the condition** that mobilization costs in April are funded from the proceeds of the current DIP Facility. Additional costs incurred and paid after the Confirmation Hearing would be subject to availability of funding from the DIP Facility, any supplemental DIP financing or any use of cash collateral agreed by secured creditors and approved by the Court, and would not result in unfunded administrative liabilities to their estates. The Debtors believe that this limitation protects their stakeholders and that the stakeholders stand only to benefit from preservation and enhancement of the value of the Project Assets. For the foregoing reasons, the Debtors request that the Motion be approved.

III. JURISDICTION AND VENUE

16. The court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* entered by the United States District Court for the District of Delaware on February 29, 2012. This is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

IV. RELIEF REQUESTED

17. By this Motion, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as **Exhibit A**, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, approving and authorizing the Debtors to recommence construction on the Project on the terms and conditions set forth herein.

V. BASIS FOR RELIEF

18. The Court may grant the relief requested in this Motion under section 363(b)(1) of the Bankruptcy Code. Section 363(b)(1) provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). The use, sale, or lease of property of the estate, other than in the ordinary course of business, is authorized when a “sound business purpose” justifies such action. *See, e.g., In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (“[I]n determining whether to authorize the use, sale, or lease of property of the estate under [section 363(b)], courts require the debtors to show that a sound business purpose justifies such actions.”); *see also Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (noting that under normal circumstances, courts defer to a trustee’s judgment concerning use of property under section 363(b) when supported by a legitimate business justification); *In re Chateaugay*

Corp., 973 F.2d 141, 143 (2d Cir. 1992) (holding that the movant must prove a good business reason to show it is entitled to relief under section 363(b)); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 674 (Bankr. S.D.N.Y. 1989) (noting that the standard for determining a section 363(b) motion is a “good business reason”).

19. The Debtors’ business judgment to recommence construction on the Project is sound. As set forth above, the Debtors believe that the Project Assets are valuable and present an attractive investment opportunity to the Plan Sponsor or another potential investor. The Debtors believe that the estimated \$850 million cost-to-completion offers a compelling value proposition. However, non-monetary impediments to completion would necessarily increase risk and, in turn, dampen investor interest in the Project Assets and jeopardize the Debtors’ reorganization. One such impediment would result if Mesabi’s construction authorization did become invalid as suggested by the MPCA for failure to recommence construction.

20. In short, the relief requested in the Motion provides assurances to the Plan Sponsor and other potential purchasers of the Project Assets that the necessary permitting will remain in place for construction to recommence and continue as anticipated upon acquisition of those assets. Given the costs of delays and uncertainty surrounding any potential re-permitting process, the Debtors believe the value of this assurance far exceeds the cost to the Debtors of recommencing construction and performing the Proposed Work. The Proposed Work itself will naturally increase the value of the Project Assets because of the value of the completed Proposed Work and the fact that the Project will require a correspondingly reduced funding to be completed after the effective date of the Plan. The Debtors believe that the cost of recommencing construction and performing the Proposed Work is justified even discounting for the risk that the Plan cannot be confirmed.

21. Importantly, the Debtors intend to fund the Project Work through advances under the DIP Facility. The Debtors do not intend to, and will not, incur unfunded administrative liabilities to perform the Proposed Work. As such, the Debtors' other stakeholders will not be prejudiced by the relief requested in the Motion but, instead, stand to gain significantly through the preservation and enhancement in value that may be obtained as a result of such relief.

22. Accordingly, the Debtors submit that the relief requested is a reasonable exercise of their business judgment, is in the best interests of the Debtors and their estates, and should be granted.

VI. NOTICE

23. Notice of this Motion has been provided to (i) the Office of the United States Trustee for the District of Delaware, (ii) counsel to the Committee, (iii) counsel to the DIP Lender, and (iv) those parties that have filed requests for notices in this case pursuant to Bankruptcy Rule 2002. The Debtors submit that in view of the facts and circumstances, such notice is sufficient and no other or further notice need be provided.

24. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

VII. CONCLUSION

WHEREFORE the Debtors respectfully request entry of an order granting the relief requested herein and such other and further relief that is just and proper.

Dated: March 24, 2017

Respectfully submitted,

/s/ L. John Bird

Jeffrey M. Schlerf (DE No. 3047)
L. John Bird (DE No. 5310)
Courtney A. Emerson (DE No. 6229)
FOX ROTHSCHILD LLP
919 North Market Street, Suite 300
Wilmington, DE 19801
Telephone: (302) 654-7444
Facsimile: (302) 656-8920
jschlerf@foxrothschild.com
jbird@foxrothschild.com

Thomas E Lauria (admitted pro hac vice)
Matthew C. Brown (admitted pro hac vice)
WHITE & CASE LLP
Southeast Financial Center
200 South Biscayne Boulevard
Suite 4900
Miami Florida 33131-2352
Telephone: (305) 371-2700
Facsimile: (305) 385-5744
tlauria@whitecase.com
mbrown@whitecase.com

Craig H. Averch (admitted pro hac vice)
Ronald K. Gorsich (admitted pro hac vice)
Lauren C. Fujiu-Berger (admitted pro hac vice)
WHITE & CASE LLP
555 South Flower Street
Suite 2700
Los Angeles, California 90071
Telephone: (213) 620-7700
Facsimile: (213) 452-2329
caverch@whitecase.com
rgorsich@whitecase.com
lfujiu@whitecase.com

Attorneys for the Debtors and Debtors in Possession

EXHIBIT A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

ESSAR STEEL MINNESOTA LLC and
ESML HOLDINGS INC.,¹

Debtors.

Chapter 11

Case No. 16-11626 (BLS)

(Jointly Administered)

Re: Docket No. _____

**ORDER GRANTING DEBTORS' MOTION, PURSUANT TO SECTIONS 105(a)
AND 363(b)(1) OF THE BANKRUPTCY CODE, FOR AN ORDER AUTHORIZING
THE DEBTORS TO RECOMMENCE CONSTRUCTION ACTIVITIES ON THE
PROJECT**

Upon consideration of the motion (the "**Motion**"),² dated March 24, 2017, of Mesabi Metallics Company LLC (f/k/a Essar Steel Minnesota LLC) ("**Mesabi**") and ESML Holdings Inc. ("**Holdings**," and, together with Mesabi, the "**Debtors**"), as debtors and debtors in possession in the above-captioned chapter 11 cases, for entry of an order authorizing and approving construction on the Project Site; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding within the meaning of 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and it appearing that no other or further notice need be provided; and upon the record of all of the proceedings had before the Court; and the Court having found and determined that the relief

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requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and all parties in interest, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

1. The Motion is GRANTED.
2. The Debtors are authorized to contract for work on the Project, including the Proposed Work, in an aggregate value of up to \$5 million; provided, however, that any amounts contracted for must be funded from the DIP Facility or any supplemental debtor-in-possession financing or use of cash collateral approved by this Court.
3. This Order is without prejudice to the Debtors' rights to request authority to incur additional amounts in performing construction activities at the Project Site by appropriate motion.
4. Pursuant to Bankruptcy Rule 6004(h), to the extent it is applicable, the terms and provisions of this Order shall be immediately effective and enforceable upon its entry.
5. This Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order and to grant all other and further relief that is just and proper.

Dated: _____, 2017
Wilmington, Delaware

Hon. Brendan L. Shannon
United States Bankruptcy Judge