

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS
(Central Division)

In Re:)	
)	
)	Chapter 11
UNIVERSAL SOFTWARE CORPORATION.)	Case No. 16-40872-CJP
)	
Debtor.)	

**DEBTOR'S DISCLOSURE STATEMENT
WITH RESPECT TO DEBTOR'S CHAPTER 11 LIQUIDATION
PLAN DATED JULY 5, 2017**

UNIVERSAL SOFTWARE CORPORATION
By its attorney,

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Dated: July 5, 2017

Table of Contents

I.	Introduction
II.	Historical Background of the Debtor
III.	Events Leading to Chapter 11
IV.	Debtor's Post-Filing Operations and Administration
V.	Debtor's Proposed Plan of Liquidation
VI.	Plan Acceptance, Confirmation, and Completion
VII.	Voting Instruction
VIII.	Conclusion

I. INTRODUCTION

This Disclosure Statement has been prepared by Universal Software Corporation (referred to herein as the “Debtor”), pursuant to 11 U.S.C. Section 1125, and has been approved by the Bankruptcy Court as providing the information which the Court deems adequate to permit creditors of the Debtor to make an informed judgment in exercising their right to vote for or against the Plan of Liquidation which is described below, and a copy of which is served upon you. The Court has authorized the distribution of this Disclosure Statement to holders of claims and interests in the Debtor.

UNDER THE PLAN OF LIQUIDATION, THE DEBTOR PROPOSES TO ESTABLISH A FUND OF \$110,000, FROM WHICH ONE \$110,000 DISTRIBUTION WILL BE MADE TO THE HOLDERS OF ALLOWED GENERAL UNSECURED CLAIMS, ON OR WITHIN THIRTY (30) DAYS FOLLOWING THE EFFECTIVE DATE OF CONFIRMATION. THE DEBTOR ESTIMATES THAT THE TOTAL DIVIDEND PAID ON HOLDERS OF ALLOWED GENERAL UNSECURED CLAIMS WILL BE AN

ESTIMATED 5% DIVIDEND DEPENDING ON THE AMOUNT OF EACH SUCH ALLOWED GENERAL UNSECURED CLAIM.

THE DEBTOR HAS MADE A REASONABLE EFFORT TO ENSURE THAT THE INFORMATION CONTAINED IN THE DISCLOSURE STATEMENT IS ACCURATE, BUT CANNOT WARRANT THE ACCURACY OF SUCH INFORMATION.

UNIVERSAL SOFTWARE CORPORATION BELIEVES THAT THE PLAN OF LIQUIDATION IS IN THE BEST INTEREST OF ALL CREDITORS AND PROVIDES CREDITORS WITH THE GREATEST RETURN ON THEIR CLAIMS WITHIN THE SHORTEST PERIOD OF TIME AND IS PREFERABLE TO A CHAPTER 7 LIQUIDATION CASE WITH ADDED COSTS OF ADMINISTRATION. THEREFORE, UNIVERSAL SOFTWARE CORPORATION RECOMMENDS THAT ALL CREDITORS WHO ARE ENTITLED TO VOTE, VOTE TO ACCEPT THE PLAN OF LIQUIDATION.

II. HISTORICAL BACKGROUND OF THE DEBTOR

A. General Background

The Debtor was formed in 1992 in Massachusetts as an IT consulting, software development, and IT project management services firm. Its offices are located at 1 Olde North Road, Chelmsford, Massachusetts. The Debtor was a provider of IT staffing services to various companies, itself, or through its 99% owned affiliate USoft Technologies India Private Limited (“USoft”), an India corporation. Debtor provided staffing services that placed, in U.S. companies, individuals in the employ of the Debtor to fill the U.S. companies’ IT staffing requirements. At the time of the Chapter 11 filing, the Debtor had 90 full time employees.

In 2014 the Debtor generated gross revenues of \$17,564,206, and a profits of \$57,657. In 2015 the Debtor generated gross revenues of \$17,942,316, and a loss of \$1,342,862.

The Debtor's is owned 100% by Kishore Deshpande, who is the company's founder and resides with his family in Littleton, Massachusetts.

III. PROBLEMS LEADING TO CHAPTER 11

The Debtor began suffering losses in 2015 due primarily to increased costs of the United States H-1B Visa Program, used by the Debtor to attract qualified IT professionals from India. The increase in costs of the program resulted in dramatically increased labor costs for the Debtor.

The declining revenues led to the Debtor falling behind on its loan obligations to both its secured lenders TD Bank, N.A. ("TD Bank") and TVT Capital, LLC ("TVT"). The Debtor was also delinquent on payment to its vendors, many of whom the Debtor contracted with to provide IT consultant services to its clients. As a result, certain vendors commenced collection actions against the Debtor to collect outstanding amounts, and attach and/or seize assets.

On May 18, 2016, the Debtor filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code").

IV. DEBTOR'S POST-FILING OPERATIONS AND ADMINISTRATION

A. Background

Since the Petition Date, the Debtor has operated as a debtor-in-possession under Sections 1107 and 1108 of the Bankruptcy Code. Post filing, the Debtor ceased using third party vendors to perform IT consulting services for its clients, and instead relied exclusively on its employees, and those of its affiliate USoft Technologies India PVT, Ltd, to provide managed IT consultant services.

On May 26, 2016, the Court entered its Interim Agreed Order Authorizing Debtor's Use of Cash Collateral Pursuant to 11 U.S.C. § 363 and Providing Adequate Protection to Lenders Pursuant to 11 U.S.C. § 363 (the "Interim Cash Collateral Order"), authorizing the Debtor's use of TD Bank's and TVT's Cash Collateral (as defined in the Cash Collateral Order). On July 5, 2016, the Court entered its Final Agreed Order Authorizing Debtor's Use of Cash Collateral Pursuant to 11 U.S.C. § 363 and Providing Adequate Protection to Lenders Pursuant to 11 U.S.C. § 363 (the "Final Cash Collateral Order").

On July 5, 2016, the Debtor received authorization from the Court to pay all pre-petition priority wage claims, as well as the pre-petition claim of critical vendor, USoft Technologies India PVT, Ltd.

B. Sale of Assets

The Debtor's revenues continued to decrease after the Chapter 11 filing. The Debtor's efforts to seek outside investment to assist with a possible reorganization did not result in any meaningful proposal. In late November 2016, the Debtor was approached by another IT consultant firm, First Tek, Inc. ("FirstTek"), of Piscataway, New Jersey offering to purchase substantially all assets of the Debtor.

On February 1, 2017, the Debtor and FirstTek entered an Asset Purchase Agreement (the "Agreement") pursuant to which the Debtor agreed to sell by a private sale to FirstTek substantially all of its assets, free and clear of all of liens, claims, interests and encumbrances (the "Purchased Assets"). The Purchased Assets included all operating assets of the Debtor, including deposit accounts, accounts receivable, securities, inventory, equipment, working capital, trademarks, intellectual property, rights to the brand, equity interests in any subsidiaries of the Debtor owned by the Debtor, goodwill and other assets used in connection with the business of the Debtor.

The final price for the Purchased Assets was One Million Six Hundred Thousand Dollars (\$1,600,000).

Pursuant to the Order approving the sale of the Purchased Assets to FirstTek (the “Sale Order”) the proceeds of the sale of the Purchased Assets (the “Sale Proceeds”) included a \$210,000 carve-out (the “Carve-Out Fund”) from first priority secured creditor TD Bank, NA’s collateral for use by the Debtor’s estate in order to fund a Chapter 11 liquidating plan, as follows: \$5,000 to TVT secured claim; \$95,000 to administrative professional fees; and \$110,000 to general unsecured creditors. The sale closing took place effective April 1, 2017. Immediately following the closing, the Debtor paid \$1,431,423.43 from the Sale Proceeds to TD Bank in full satisfaction of its secured claim, including TD Bank’s counsels’ fees. The Debtor distributed an additional \$1,175,000 from the Sale Proceeds to pay certain priority wage claims.

C. Preferential Transfers

The Debtor has analyzed all payments and transfers made within the 90 days prior to their Chapter 11 filing to creditors and within one year to insiders to determine whether any may be deemed to be preferential pursuant Section 547 of the Bankruptcy Code. The Debtor has determined that there exists a potential preferential transfer in the amount of approximately \$35,000 in favor EFB Consultants, LLC just prior to the Debtor’s Chapter 11 filing when it received and executed a trustee process bank account attachment on the Debtor’s pre-petition bank account at TD Bank, within ninety (90) days of the Debtor’s Chapter 11 filing. The Debtor intends to commence the appropriate adversary proceeding to recover the potential preferential transfer.

C. Disputed Claims

No payment shall be made with respect to a Disputed Claim until that Claim becomes an Allowed Claim, by agreement of the parties or by final order of the Bankruptcy Court. Unless

otherwise provided in the Plan, the Debtor shall pay to the holder of such Allowed Claim the amount provided in the Plan as soon as practicable after the Allowed Claim is established.

V. DEBTOR'S PROPOSED PLAN OF LIQUIDATION

Reference is made to the Debtor's Chapter 11 Plan of Liquidation Dated July 5, 2017 filed herewith (the "Plan"). For details concerning the classification and treatment of holders of claims against, and interests in the Debtor, as well as other issues concerning the confirmation of the Plan, it is advised that one review the actual Plan, a copy of which is attached hereto and marked as Exhibit #1. All terms defined in the Plan have the same meanings herein, unless otherwise noted.

A. Source of Funds

The Plan is a liquidation plan in which the Debtor proposes to distribute the proceeds received from the sale of substantially all of its assets to FirstTek in connection with the Sale Motion, including the Carve-Out Funds, in accordance with this Plan. Under the Plan, the Debtor will establish a fund in the amount of \$110,000, utilizing the Carve-Out Funds (the "Plan Fund") from which it will make one \$110,000 dividend distribution to the general unsecured creditors on or within thirty (30) days following the Effective Date of confirmation of the Plan in a pro rata amount to holders of Allowed General Unsecured Claims. The total distribution to holders of Allowed General Unsecured Claims will represent an estimated 5% dividend on their Allowed Claim, depending on the ultimate amount of Allowed General Unsecured Claims after objections, if any, are filed and a final determination made.

The following payments will be made on or within thirty (30) days following the Effective Date:

1. Class Two TVT Financial Secured Claim: \$ 5,000
2. Class Three General Unsecured Claims: \$110,000

3.	Administrative Expense Claims:	\$ 95,000
4.	Priority Wage Claims:	\$ 72,750 (at 97%)
5.	Priority Tax Claims:	<u>\$ 16,250 (at 97%)</u>
	TOTAL:	\$299,000

All distributions under the Plan will be made by Debtor's counsel Riley & Dever, P.C. as Disbursing Agent for the Debtor.

B. Treatment of Administrative Expenses and US Trustee Fees

The Administrative Claims consists of expenses incurred during the administration of this Chapter 11 case, including post-petition state and federal taxes, as well as professional fees and expenses, are estimated to total \$170,000. It is estimated that the Administrative Claim of legal fees to the Debtor's court employed counsel, Riley & Dever, P.C. will total approximately \$125,000. The Debtor's counsel has received a retainer of \$10,000.

It is further estimated that the Administrative Claim of legal fees to the Debtor's court employed special business counsel, Lyne, Woodworth & Evarts LLP will total approximately \$15,000.

It is further estimated that the Administrative Claim of legal fees to the Creditors' Committee court employed counsel, Posternak, Blankstein & Lund, LLP will total approximately \$15,000.

It is estimated that the Administrative Claim of accounting fees to the court employed accountants RJ Augustine, CPA will total approximately \$10,000.

All administrative claims will be paid a pro rata share from the Carve-Out of \$95,000 on or within thirty (30) days following the Effective Date of confirmation. All professional fees are subject to final allowance by the Bankruptcy Court. There are no other known Administrative

Expense Claims. The Debtor shall obtain the consent of all holders of Administrative Claims prior to confirmation in accordance with 11 U.S.C. §1129(a)(9).

All Quarterly Fees due and owing to the United States Trustee have been paid. The Debtors will pay all future Quarterly Fees through the closing of this case as they become due. There are no other known Administrative Claims, including unpaid post-petition taxes. Funds to pay the Administrative Claims, in amounts allowed by the Court, will be paid on the Effective Date of confirmation.

C. Classification and Treatment of Claims and Interests

The Plan divides all claims and interests into the following four classes and provides for the treatment indicated:

Class One (Allowed Priority Claims): This class consists of all Allowed Priority Claims, including Allowed Priority Tax Claims and Allowed Priority Wage Claims. All holders of a Class One Allowed Priority Claims shall be paid a pro rata share from a Plan Fund of \$89,000, on or within thirty (30) days following the Effective Date of confirmation.

All pre-petition and post-petition federal and state returns have been filed. Priority tax claims are estimated to be \$16,750. Priority wage claims are estimated to be \$75,000. Total Class One Priority Claims are estimated at \$91,750. There are no other known Priority Claims.

The total distribution from the Plan Fund represents an estimated total dividend distribution of 97% on the Class One Allowed Claims. The Debtor shall obtain the consent of all holders of Priority Claims prior to confirmation in accordance with 11 U.S.C. §1129(a)(9).

This class is unimpaired under the Plan and each member is not entitled to vote to accept or reject the Plan.

Class Two – Secured Claim TVT Capital, LLC: This class consists of the Allowed Secured Claim of TVT Capital, LLC (“TVT”) against the Debtor. Prior to the Chapter 11 filing,

TVT held a junior priority security interest in all assets, including all inventory, accounts receivables, furniture, fixtures and equipment pursuant to: (i) a Revenue Based Factoring Agreement and Security Agreement dated September 18, 2015 in the original principal amount of \$300,000; and (ii) a Revenue Based Factoring Agreement and Security Agreement dated November 18, 2015 in the original principal amount of \$300,000. The outstanding balance owed by the Debtor to TVT Capital as of the Petition Date was approximately \$600,000. It appearing that based on the value of the Debtor's accounts receivable, as well as the equipment and furnishings of the Debtor, that TVT is an undersecured creditor of the Debtor, the Debtor commenced an adversary proceeding against TVT pursuant to 11 U.S. C. §506(a) seeking a determination that TVT's secured claim is wholly unsecured. In connection with the sale of substantially all assets of the Debtor to First-Tek pursuant to the Sale Motion, TVT consented to the sale of the Collateral and further agreed to reduce its secured claim against the Carve-Out from the Sale Proceeds to \$5,000. Pursuant to the terms of the Sale Order, TVT holds a first priority security interest in the Carve-Out to the extent of Five Thousand Dollars (\$5,000.00).

The Allowed Secured Claim of TVT shall be fully settled and satisfied by the payment of \$5,000 from the Carve-Out on or within 30 days following the Effective Date.

This claim is impaired under the Plan and the claimant is entitled to vote to accept or reject the Plan.

Class Three – (Allowed Unsecured Claims): This class consists of all Allowed Claims other than Class One, and Two. Each holder of a Class Three Allowed Claim shall be paid in full satisfaction thereof a pro rata share of \$110,000 from the Plan Fund established and funded by the Carve-Out Funds. The Debtor will hold from distribution to Class Three Unsecured Creditors and set aside an amount equal to the distributions that would be required to be made to the Unsecured Creditors holding Disputed Claims in the event that such claims later become Allowed Claims (the

"Disputed Claim Reserve"). Upon resolution of the Disputed Claims and distributions to holders of such claims which become Allowed Claims, if any, the Debtor will disburse the balance of the Disputed Claim Reserve to Unsecured Creditors pro rata.

The Debtor's estimate there are approximately \$2,000,000 in general unsecured claims, including the following potential Deficiency Claims, and Undersecured Claims:

<u>Undersecured Claimants</u>	<u>Estimated Claim</u>
TVT Capital	\$595,000

There exists no known insider claims.

There exist no claims for the rejection of any leases or executory contracts.

The Debtor will make one \$110,000 distribution to the general unsecured creditors on or within thirty (30) days following the Effective Date of confirmation of the Plan from the Plan Fund in a pro rata amount to holders of Allowed General Unsecured Claims.

The total distribution from the Plan Fund represents an estimated total dividend distribution of 5% on the Class Three Allowed Claims, depending on the ultimate amount of Allowed General Unsecured Claims.

This class is impaired under the Plan and each member is entitled to vote to accept or reject the Plan.

Class Four (Allowed Interests – Kishore Deshpande): This class consists of all allowed interests in the Debtor. Currently, the outstanding shares of stock in the Debtor are held by Kishore Deshpande – 100%. Upon confirmation of the Plan, all outstanding stock in the Debtor will be canceled and a new class of equity interests in the Confirmed Debtor shall be created hereunder, and thereafter such new class of interests shall become the only class of interests in the Confirmed Debtor. Such new class shall consist of a 100% interest in the Confirmed Debtor to Kishore Deshpande.

This class is impaired under the Plan and each member is entitled to vote to accept or reject the Plan.

VI. PLAN ACCEPTANCE AND CONFIRMATION

In order to confirm the Plan, the Bankruptcy Code requires, among other things, that the Plan be accepted by requisite votes of creditors, and that the Bankruptcy Court make a series of determinations concerning the Plan, including: (i) That the Plan has classified creditors in a permissible manner; (ii) that the contents of the Plan comply with the technical requirements of Chapter 11 of the Bankruptcy Code; (iii) that the Plan has been proposed in good faith; and (iv) that the disclosures concerning the Plan have been adequate and have included information concerning all payments made or promised in connection with the Plan and the Chapter 11 case, as well as the identity, affiliation and compensation to be paid to all officers, directors and other insiders.

The Debtor believes that all of these conditions (with the exception of an actual vote having taken place on the Plan) have been met and will seek rulings of the Bankruptcy Court to this effect at the hearing on confirmation of the Plan. The Bankruptcy Code also requires that the Plan be "feasible" and that confirmation of the Plan be in the "best interests" of all creditors, and that the Plan is fair and equitable with respect to each class of claims. To confirm the Plan, the Bankruptcy Court must find that these conditions are met. Thus, even if the creditors accept the Plan by the requisite votes, the Court must make independent findings relating to the Plan's feasibility, whether it is fair and equitable and in the best interests of the creditors and interest holders. These conditions are discussed below.

A. Best Interests of the Creditors ("Liquidation Alternative")

The "best interests" test requires that the Bankruptcy Court find that the Plan provides to each member of each impaired class, a recovery which has a present value at least equal to the present value of the distribution which each member of such class would receive if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code. Under the Plan, creditors in Class One, Class Two, and Class Three are impaired. The creditors in Class Three represent the Class of Allowed General Unsecured Claims. Therefore, under the best interests test, these creditors must receive under the Plan at least as much as they would receive if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code. The Plan is a liquidating Chapter 11 plan. Therefore, the all assets of the Debtor have been liquidated and are being distributed to creditors under the Plan.

Other than the Sale Proceeds, there are no further assets that would be available to the general unsecured creditors in a liquidation case under Chapter 7. In fact, under the Plan, priority and administrative claimants are agreeing to a pro rata share of the Sale Proceeds, rather than payment in full, in order to make the Plan confirmable. In theory, in a Chapter 7 case, priority and administrative claimants would be entitled to payment in full before a distribution could be made to general unsecured creditors. In addition, a Chapter 7 case would result in further administrative costs associated with the appointment of a Chapter 7 Trustee, thereby reducing the amount available to general unsecured creditors.

In contrast, under the Plan, Class Three General Unsecured Creditors will receive a pro rata distribution of \$110,000, or an estimated 5% dividend on their Allowed General Unsecured Claims all within one year following the Effective Date of Confirmation.

B. The Plan is Feasible

Approximately \$299,000 will be needed to make the payments to creditors under the Plan on the Effective Date of confirmation, including (1) \$5,000 to secured creditor TVT, (2) \$95,000

for payment of Allowed Administrative Claims, (3) \$89,000 for payment of Allowed Priority Claims (at 98%), and \$110,000 for final distribution to holders of Allowed General Unsecured Claims under the Plan, within thirty days following the Effective Date of confirmation. The Debtor is currently holding \$299,000 to make the payments required to be made on the Effective Date.

As a condition to confirmation, the Bankruptcy Code requires that confirmation is not likely to be followed by liquidation or the need for further financial reorganization of the Debtor. Because the Plan is a liquidating plan and all of the Debtor's assets have been liquidated and are being used to fund the Plan, this condition has been satisfied.

VII. VOTING INSTRUCTIONS

A. General Procedure

It is important that you exercise your right to vote to accept or reject the Plan if you are a member of a class of impaired claims. A ballot, together with instructions for voting, accompanies this Disclosure Statement. You should read the ballot carefully and follow the instructions.

The Bankruptcy Code provides that only holders of allowed claims, or claims which are deemed allowed, or claims which have not been disallowed, are entitled to vote on the Plan. A claim to which an objection has been filed is not an allowed claim unless and until the Bankruptcy Court rules on the objection. The Bankruptcy Court may temporarily allow a disputed claim for purposes of voting on the Plan.

Creditors should return their ballots to counsel for the Debtor: George J. Nader, Esquire, Riley & Dever, P.C. 210 Broadway, Suite 101, Lynnfield, Massachusetts 01940. In order for your vote to count, your ballot must be received no later than the date set forth in the ballot.

B. Acceptance, Confirmation, and Completion of the Plan

Except as discussed below, a prerequisite to confirmation of the Plan is the acceptance of the Plan by each class of claims or interest that is "impaired" by the Plan. A class is impaired if the legal, equitable or contractual rights attaching to the claims or interests of that class are modified, other than by curing defaults and reinstating maturities, or by payment in full in cash. Classes One, Two, and Three are the only classes of creditors impaired under the Plan.

Classes of claims or interests that are not impaired under the Plan are deemed to have accepted the Plan. Acceptance of the Plan is being solicited only from those claimants who hold claims or interests are within impaired Classes. A class of impaired claims has accepted the Plan if a majority in number and two-thirds in dollar amount of the allowed claims of such class who ACTUALLY VOTE have voted to accept the Plan. If the requisite acceptances of each class of impaired claims is obtained and the Plan is confirmed, the Plan will be binding with respect to all holders of claims of each impaired class, including members who did not vote, or who voted to reject the Plan. The failure of an impaired class of creditors to accept the Plan does not necessarily mean the Plan will not be confirmed by the Bankruptcy Court. Under certain circumstances, the Court has the power under Bankruptcy Code Section 1129 to "cram-down" or force the rejecting class to accept or be deemed to have accepted the Plan. Once the Plan has been confirmed by a final Order of the Bankruptcy Court, it becomes a binding contract between the Debtor and all persons affected under the Plan. In the event the Debtor defaults under its obligations under the Plan, the creditors or other parties in interest under the Plan shall have all rights afforded to them under the Plan, and the right to enforce the provisions of the Plan by bringing the appropriate proceeding in any appropriate forum.

Once the Debtor has achieved "substantial consummation" of the Plan, as defined by 11 U.S.C. §1101(2), the Debtor shall file an Application for Final Decree seeking to close this case.

VIII. CONCLUSION

The Debtor urges creditors to vote for the Debtor's Plan. For the reasons stated above, the Debtor believes that his Plan provides substantially better prospects for creditors to receive a greater dividend and prompt payment on their claims.

UNIVERSAL SOFTWARE CORPORATION
By its President,
/s/ Kishore Deshpande

Kishore Deshpande, President

BY COUNSEL:

/s/ George J. Nader

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