

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW HAMPSHIRE

In re

LTD Management, Inc.  
Debtor

Chapter 11  
Case No. 17-10684-MAF

**Hrg: 11/29/17 @ 1:30 p.m.**

**UNITED STATES TRUSTEE'S OBJECTION TO DEBTOR'S  
DISCLOSURE STATEMENT DATED OCTOBER 27, 2017**

To the Honorable Michael A. Fagone, United States Bankruptcy Judge:

Pursuant to 28 U.S.C. § 586(a)(3)(B), 11 U.S.C. § 1125, and Fed. R. Bankr. P. 3017, the United States Trustee submits this objection to the adequacy of the Debtor's Disclosure Statement Dated October 27, 2017 ("**Disclosure Statement**") in support of the Debtor's Plan of Reorganization Dated October 27, 2017 ("**Plan**").

1. **Corporate Charter.** The Debtor states on page 5 that it has revived or is in the process of reviving the LTD Management, Inc. corporation with the New Hampshire Secretary of State. Disclosure Statement, p. 5. The Debtor later states it is a corporation organized and existing under the laws of the State of New Hampshire. Disclosure Statement, p. 7. According to records on file with the New Hampshire Secretary of State, the corporation was dissolved September 8, 2010, more than seven (7) years ago. New Hampshire state law permits a dissolved corporation to be reinstated, but if more than 3 years have expired since the date of dissolution, the requirements to reinstate are more onerous. *See* NH RSA 293-A:14-22-a Late Reinstatement. The United States Trustee calls upon the Debtor to state whether it has submitted its application for reinstatement and whether it has reason to believe that the corporation will be reinstated.

2. **Projections.** The Debtor is engaged in the business of owning and managing one parcel of mixed-use real estate at 63 Route 27, Raymond, New Hampshire. There are 2 residential tenants and 3 commercial tenants. The projections attached to the Disclosure Statement for Year 1 include rental income for all 5 tenants. The projections for Years 2 through 5 appear to include the total revenue for all 5 tenants but omit references to residential tenants.

3. **Claim of the New Hampshire Department of Environmental Services.** The Debtor's Disclosure Statement references an environmental "issue" resulting from some underground storage tanks. The Debtor states that it is "prepared" to work with the State in cooperation with state contractors to remove the underground oil tanks and conduct the necessary soil contamination remediation. Disclosure Statement at p. 5. The Debtor believes that a \$5,000 payment to the State Department of Environmental Services will resolve the "issue." There is no contingency plan discussed in the event that the environmental "issue" becomes a liability that might survive confirmation.

4. **"New Value."** The Debtor states that its president and sole stockholder, Ms. Lisa D'Aoust, will receive shares in the Debtor upon confirmation in recognition for the \$19,000 of contributions she has made pre-petition and during the case. The Debtor implies that the \$19,000 payments unequivocally constitute "new value" that would allow the shareholder to retain her interest in the company even though unsecured creditors are receiving a projected 17.68% dividend. Disclosure Statement, p. 18, 19. The United States Trustee submits that these payments do not unequivocally constitute "new value" under the absolute priority rule set forth in 11 U.S.C. § 1129(b)(2)(B). While Courts have allowed

equity holders to retain property in exchange for contributions of added capital under what is referred to as the “new value corollary” to the absolute priority rule, the following five requirements must be met:

The junior claim holder must offer value that is: (1) new, (2) substantial, (3) money or money’s worth, (4) necessary for a successful reorganization and (5) reasonably equivalent to the value or interest received.

*In re Trikeenan Tileworks, Inc.*, 2011 BNH 008, 8-9 (citing *In re Bonner Mall P’ship*, 2 F.3d 899, 906 (9th Cir. 1993)). It is unclear that the Debtor has or will be able to satisfy the requirements cited in *Trikeenan*. The Debtor’s principal has made these contributions to her company voluntarily, and without Court approval. On information and belief, they are not administrative claims that have been approved by the Court. Even if they were, waivers of administrative claims are not likely new value because they are not necessary for a successful reorganization. *Id.* As this Court in *Trikeenan* stated:

Accepting an ad hoc new value argument thrown together on the eve of confirmation would make the absolute priority rule a superfluous, low hurdle to confirmation instead of a safeguard of the Bankruptcy Code’s priority scheme. “ *See Case*, 308 U.S. at 115–16 (noting creditors should be given precedence over stockholders in reorganization plans); *Northern Pac. R.R. Co. v. Boyd*, 228 U.S. 482 (1913) (holding the rights and interests of stockholders cannot be preserved at the expense of creditors); *Louisville Trust Co. v. Louisville, N.A. & C. Ry. Co.*, 174 U.S. 674, 683 (1899) ([W]e observe that no such proceedings can be rightfully carried to consummation which recognize and preserve any interest in the stockholders without also recognizing and preserving the interests of not merely of the mortgagee, but of every creditor of the corporation.”).

*Trikeenan* at p. 12-13. The United States Trustee asks the Debtor to provide more information that would tend to show why the Plan is fair and equitable.

5. **Liquidation Analysis.** The Debtor’s Liquidation Analysis, found on pages 21-22 of the Disclosure Statement, concludes that unsecured claims would likely receive no

dividend. However, the Debtor does not disclose the amount of cash on hand, or how that would likely be disbursed in the event of a liquidation.<sup>1</sup>

6. **TD Bank**. The Debtor's Disclosure Statement indicates that the TD Bank Loan [Class Two] will be repaid over a 20 year period. At the § 341 meeting the Debtor indicated that the TD Bank loan had fully matured. The Debtor's Disclosure Statement assumes without discussion that the matured loan could be deaccelerated and reinstated over the objection of a creditor. The United States Trustee asks the Debtor to describe whether this creditor agrees to this treatment. *See e.g., In re Liberty Warehouse Associates, Ltd. Partnership*, 220 B.R. 546 (Bankr. S.D.N.Y. 1998).<sup>2</sup>

7. **Salary of Debtor's Officer**. The Debtor should disclose the compensation arrangements for Ms. D'Aoust post-confirmation, as required under 11 U.S.C. § 1129(a)(5),

WHEREFORE, the United States Trustee submits this objection to the Debtor's Disclosure Statement Dated October 27, 2017.

Respectfully submitted,

WILLIAM K. HARRINGTON,  
UNITED STATES TRUSTEE

By: /s/ Geraldine Karonis  
Geraldine Karonis  
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Dated: November 21, 2017

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<sup>1</sup> It is not clear why the Debtor believe the priority claim of the State of New Hampshire would be paid ahead of certain secured creditors or the IRS.

<sup>2</sup> At the § 341 meeting it was not entirely clear whether the National Finance Corporation loan [Class Four] had fully matured.

CERTIFICATE OF SERVICE

I hereby certify that on this date I served a copy of the foregoing upon all parties below via CM/ECF unless otherwise noted:

Cheryl Deshaies, Esq.  
Ann Marie Dirsal, Esq.  
Christopher Dube, Esq.  
Philip S. Levoff, Esq.  
F. Bruce Sleeper, Esq.

Dated: November 21, 2017

/s/ Geraldine Karonis  
Geraldine Karonis