

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

**Caption in Compliance with D.N.J. LBR 9004-2©**

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Order Filed on September 24, 2016  
by Clerk  
U.S. Bankruptcy Court  
District of New Jersey

Case No. 16-27343 (CMG)

In Re:

ACB RECEIVABLES MANAGEMENT, INC.,

Debtor.

Chapter 11

Hearing Date:

Honorable Christine M. Gravelle

**INTERIM ORDER AUTHORIZING USE OF CASH COLLATERAL**

The relief set forth on the following pages, numbered two (2) through twelve (12) is hereby **ORDERED.**

**DATED: September 24, 2016**

Honorable Christine M. Gravelle  
United States Bankruptcy Judge

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This matter is before the Court on the motion (the “Motion”) of ACB Receivables Management, Inc., the above-captioned debtor and debtor in possession (the “Debtor”), pursuant to Sections 105, 361, 363 and 507 of Title 11 of the United States Code (the “Bankruptcy Code”) and Rule 4001(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), seeking entry of an order authorizing the Debtor’s use of its prepetition lenders’ cash collateral and granting other related relief (the “Interim Order”).

The Court having considered the Motion and the exhibit attached thereto, and the evidence submitted or adduced and the arguments of counsel made at the interim hearing held before the Court on September 21, 2016 (the “Interim Hearing”); and notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d) and 9014; and the Interim Hearing having been held and concluded; and any and all objections, if any, to the interim relief in the Motion having been withdrawn, resolved or overruled by the Court; it appearing that granting the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtor and the bankruptcy estate pending a final hearing on the Motion, and is otherwise fair and reasonable and in the best interest of the Debtor, the Debtor’s bankruptcy estate and creditors; and after due deliberation and consideration, and for good and sufficient cause appearing therefor;

**THE COURT, BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING BY THE DEBTOR, HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

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A. Notice and Hearing. Notice of the Motion and the order shortening time pursuant to D.N.J. LBR 9013-1(e) and Bankruptcy Rule 9006(c) for the Interim Hearing has been served in accordance with section 102(1) of the Bankruptcy Code and Bankruptcy Rule 4001(b), which notice is appropriate under the particular circumstances and sufficient for all purposes under the Bankruptcy Code and the applicable Bankruptcy Rules in respect to the relief requested.

B. Chapter 11 Filed. The Debtor filed its petition under Chapter 11 of the Bankruptcy Code on September 9, 2016 (the “Petition Date”), and is continuing in the operation and management of its business as a debtor-in-possession in accordance with sections 1107 and 1108 of the Bankruptcy Code.

C. Jurisdiction and Venue. This Court has jurisdiction over these proceedings pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2).

D. Acknowledgments. Without prejudice to the rights of parties in interest, the Debtor admits, stipulates, acknowledges and agrees as follows (collectively, the “Stipulations”).

1. *Prepetition Secured Lenders.* Prior to the Petition Date, the Debtor entered into separate credit facilities with TD Bank, N.A. (“TD Bank”) and PNC Bank, National Association (“PNC” and together with TD Bank, the “Secured Lenders”).

2. *The TD Bank Facility.*

a. On February 9, 2007, the Debtor entered into a commercial loan and

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security agreement with Commerce Bank, TD Bank's predecessor-in-interest, in the amount of \$500,000.00 (the "TD Loan" and any and all documents evidencing the Loan being collectively referred to as the "TD Loan Documents"). The TD Loan provides for monthly payments of principal and interest at an initial rate of 9.25% and thereafter at the Prime Rate, plus 1% (as defined in the TD Loan Documents).

b. On October 24, 2007, the Debtor entered into a revolving term note and security agreement with TD Bank, in the face amount of \$50,000.00. Debtor's obligation to pay the sums due under the revolving term note was evidenced by a revolving line of credit note most recently restated and amended by an amended and restated revolving term note dated October 26, 2011 (the "TD Revolving Loan" and any and all documents evidencing the Loan being collectively referred to as the "TD Revolving Loan Documents"). The TD Revolving Loan provides for monthly payments of interest at the Prime Rate, plus 1.5% (as defined in the TD Revolving Loan Documents), and is guaranteed by the Debtor's affiliate Silpit Industries, LLC ("Silpit"), and well as the Debtor's principal Oleg Shnayderman.

3. *The PNC Facility.* On or about June 3, 2009, the Debtor entered into a secured loan and commercial security agreement with PNC in the amount of \$200,000 (the "PNC Loan" and any and all documents evidencing the Loan being collectively referred to as the "PNC Loan Documents"). The Loan provides for monthly payments of interest at the Prime Rate (as defined in the PNC Loan Documents) plus 1%, increasing an additional 5% upon default and is guaranteed by

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the Debtor's affiliate, Silpit.

4. *Prepetition Debt.* TD Bank has asserted a secured claim against the Debtor in the approximate amount of \$100,000 (the "TD Secured Claim") and PNC has asserted a secured claim against the Debtor in the approximate amount of \$202,000 (the "PNC Secured Claim" and together with the TD Secured Claim, the "Secured Claims").

5. *Prepetition Collateral.* As of the Petition Date, (a) the TD Loan was secured by a valid, properly perfected and enforceable first priority, security interest in and lien on all of the Debtor's accounts, inventory, equipment and other property and assets of any kind as identified in the TD Loan Documents and certain real property owned by Silpit (collectively, the "TD Collateral") and (b) the PNC Loan was secured by a valid, properly perfected and enforceable second priority, security interest in and lien on all of the Debtor's accounts, inventory, equipment and other property of any kind as identified in the TD Loan Documents and certain real property owned by Silpit (collectively, the "PNC Collateral" and together with the TD Collateral, the "Prepetition Collateral"). The Debtor, as set forth in the Motion, reaffirms that the Prepetition Collateral is comprised of Accounts Receivable,<sup>1</sup> cash, machinery, equipment and office furniture with an estimated value of \$578,000 in the aggregate and a breach of contract claim with an estimated value of \$1 million and, consequently, both TD Bank and PNC are entitled to postpetition interest on their respective loans.

6. *Secured Claims.* The Debtor acknowledges and agrees that, as of the Petition

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<sup>1</sup>Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Motion.

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Date, the TD Secured Claim and the PNC Secured Claim (a) were secured by valid, properly perfected

and enforceable first and second priority interests in and liens on the Prepetition Collateral and all proceeds thereof held by TD Bank and PNC, respectively; (b) are not subject to any reduction, offset, counterclaim or other defense of any kind or nature; and (c) constitute allowed, fully secured claims under sections 502 and 506(a) of the Bankruptcy Code.

7. Postpetition Interest Rate. PNC and the Debtor acknowledge and agree that, as of and after the Petition Date, the interest rate applicable to the PNC Loan is PNC's Prime Rate (as defined in the Loan Documents) plus 1%.

E. Findings Regarding Cash Collateral.

1. Cash Collateral. "Cash Collateral" as defined by section 363(a) of the Bankruptcy Code includes cash, negotiable instruments, deposit accounts, other cash equivalents, postpetition accounts as provided by section 552(b) of the Bankruptcy Code and "proceeds" as that term is described in UCC Section 9-306.

2. Necessity and Best Interest. The Debtor does not have sufficient unencumbered cash or other assets with which to continue to operate its business in Chapter 11. The Debtor requires immediate authority to use Cash Collateral as defined herein in order to continue its business operations without interruption toward the objective of formulating an effective plan of reorganization. The Debtor's use of Cash Collateral to the extent and on the terms and conditions

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set forth herein is necessary to avoid immediate and irreparable harm to the estate pending a final hearing. The amount of Cash Collateral authorized to be used pending a final hearing or entry of a final order is not to exceed the amounts reflected in the Debtor's monthly budget, annexed hereto as Exhibit A (the "Cash Collateral Budget").

F. *Final Hearing.* At a hearing on the Motion scheduled for November 15, 2016 at 2:00 p.m. (the "Final Hearing"), the Debtor will seek final approval of the use of Cash Collateral pursuant to a proposed final order (the "Final Order"), the notice for which will be provided in accordance with this Interim Order.

Based on the forgoing findings of fact and conclusions of law, the Motion and the record before the Court with respect thereto, the Court having determined there is a reasonable likelihood that the Debtor will prevail upon the merits at the Final Hearing as required by section 363(c)(3) of the Bankruptcy Code, and for good and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED to the extent provided herein. The use on an interim basis of Cash Collateral is authorized subject to the terms and conditions set forth herein and all objections to the entry of this Interim Order to the extent not withdrawn or otherwise resolved, are overruled, for a period not to exceed 60 days.

2. Interim Use of Cash Collateral. The Debtor is authorized to use Cash Collateral through the date of the Final Hearing, in accordance with the cash collateral budget (the "Cash

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Collateral Budget”) attached hereto as Exhibit A in the aggregate amount of \$302,000 to (a) maintain, preserve and enhance its assets; (b) continue operation of its business, including but not limited to building payroll, payroll taxes, employee expenses and insurance costs; and (c) make the adequate protection payments to TD Bank and PNC as provided in paragraph 3(d) below. Funds received by the Debtor shall be deposited into PNC Bank checking account no. xxxx8212 bearing the label “Client Trust Account.” The Debtor is then authorized to transfer fees and disbursements owed to the Debtor from the “Client Trust Account” to the Debtor’s PNC account no. xxxx8204 bearing the label “Operating Account,” to be used as cash collateral. Funds due to the Debtor’s clients shall be remitted to clients from the “Client Trust Account” on or about the 15<sup>th</sup> of each month. Any use of Cash Collateral at variance with the Cash Collateral Budget must be approved by TD Bank and PNC in writing.

3. Adequate Protection. As adequate protection for use of cash collateral, the Secured Lenders are GRANTED:

a. *Replacement Liens.* Replacement and continuing valid, binding, enforceable and automatically perfected postpetition security interests in and liens on the Prepetition Collateral to the extent the Secured Lenders’ Cash Collateral is used by the Debtor, and to the extent and with the same priority in the Debtor’s postpetition collateral, and proceeds thereof, that the Secured Lenders held in the Debtor’s prepetition collateral pursuant to section 361(2) of the Bankruptcy Code (together, the “Adequate Protection Liens”).

b. *Deemed Perfected.* This Interim Order shall be sufficient and conclusive evidence



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of the validity, perfection and priority of the Adequate Protection Liens without the necessity of the Secured Lenders taking possession, filing or recording any financing statements, mortgages or other documents that may otherwise be required under the law or regulations of any jurisdiction or taking any other action to validate or perfect the Adequate Protection Liens. Although not required, upon request by TD Bank and/or PNC, the Debtor shall execute and deliver any and all UCC Financing Statements, UCC Continuation Statements, Certificates of Title or other instruments or documents considered by such Secured Lender to be necessary in order to perfect the Adequate Protection Liens, and the Secured Lenders are authorized to receive, file and record the foregoing at their own expense, which actions shall not be deemed a violation of the automatic stay.

c. Super Priority Administrative Expense Claim Under Section 507(b). To the extent the adequate protection provided for herein proves insufficient to protect the Secured Lenders interests in and to the Cash Collateral, the Secured Lenders shall be afforded super priority administrative expense claims (together, the "Super Priority Administration Claims") pursuant to Section 507(b) of the Bankruptcy Code.

d. Adequate Protection and Interest Payments. The Debtor shall make monthly payments to TD Bank in the amount of \$1,200.00 with the pro rata portion due for September 2016 to be made within 5 days of the entry of this Interim Order. The Debtor shall also make monthly payments to PNC in the amount of \$737.30 on the first of each month with the pro rata portion due for September 2016 to be made within 5 days of the entry of this Interim Order.

e. Periodic Accountings. At the request of either of the Secured Lender, the

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Debtor shall provide periodic accountings to the requesting Secured Lender setting forth the cash receipts and disbursements made by the Debtor under this Interim Order. In addition, the Debtor shall provide the requesting Secured Lender all other reports required by the applicable Loan Documents and/or other reports it reasonably requires, as well as copies of the Debtor's monthly United States Trustee operating reports. Upon appointment of a Creditor's Committee, the Debtor shall submit a copy of the monthly U.S. Trustee operating reports to counsel to said Committee if counsel has been appointed, and until counsel is retained, to the Chairman of said Committee.

f. *Default Hearing.* In the event Debtor defaults or violates this Interim Order, the Secured Lenders are entitled to request an expedited hearing within fourteen (14) days (or if immediate and irreparable injury, loss or damage may occur, an emergency hearing within 48 hours).

4. Quarterly Payments to the Office of the United States Trustee. The Debtor is authorized to make quarterly payments to the Office of the United States Trustee from the cash collateral.

5. The Secured Lenders' Rights of Inspection and Audit. Upon reasonable notice by either of the Secured Lenders, the Debtor shall permit TD Bank and/or PNC and any of their respective agents reasonable and free access to the Debtor's records and place of business during normal business hours to verify the existence, condition and location of collateral in which said creditor holds a security interest and, audit the Debtor's cash receipts and disbursements and perform any other inspection or appraisal rights either Secured Lender has under its respective Loan Documents.

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6. Modification of Automatic Stay. The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby modified as necessary to effectuate the terms and provisions of this Interim Order including, without limitation, permitting the Debtor to (a) grant the Adequate Protection Liens and the Super Priority Administrative Expense Claims and (b) perform such acts as may be reasonably requested by the Secured Lenders to ensure the perfection and priority of the Adequate Protections Liens.

7. Notwithstanding anything herein to the contrary, the Official Committee of Unsecured Creditors (the "Committee"), if one is appointed under § 1102 of the Bankruptcy Code, has a minimum of 60 days (or such longer period as the Committee may obtain for cause shown before the expiration of such period) from the date of the order approving the appointment of counsel to the Committee to investigate the facts and bring any appropriate proceedings as representative of the estate; or if no Committee is appointed, any party in interest has a minimum.

8. The acknowledgments in paragraph D do not apply to any trustee that may be appointed.

9. Interlocutory Order and No Modification of Adequate Protection. This Interim Order is interlocutory in nature. Nothing contained herein shall be deemed or construed to (a) limit the relief granted herein; (b) bar the Secured Lenders from seeking other and further relief (including without limitation relief from the terms of this Interim Order) for cause shown on appropriate notice to the Debtor and other parties-in-interest entitled to notice of same; or (c) require the Secured Lenders to make any further loans or advances to the Debtor. This Interim Order may be modified

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for cause shown by the Debtor, the Secured Lenders or any other party-in-interest on due notice. No such modification, however, shall deprive the Secured Lenders of their respective interests in the Debtor's prepetition and postpetition property.

10. Binding Effect of Interim Order. Immediately upon entry by this Court (notwithstanding any applicable law or rule to the contrary), the terms and provisions of this Interim Order shall become valid and binding upon and inure to the benefit of the Debtor, the Secured Lenders, all of the Debtor's other creditors, any Trustee, Committee or fiduciary that may be appointed in the Debtor's Chapter 11 case, and all other parties-in-interest and their respective successors and assigns.

11. Effect of this Interim Order. This Interim Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and take effect and be enforceable immediately upon execution thereof.

12. Retention of Jurisdiction. This Court has and retains jurisdiction to enforce this Interim Order according to its terms.

**FINAL HEARING ORDER  
IT IS FURTHER ORDERED, AND NOTICE IS HEREBY GIVEN**

That any creditor or other interested party having any objection to this Interim Order, including any objection to the Debtor's identification of "prepetition collateral set forth in Paragraph 5 on Page 5 of this Order, shall file with the Clerk of this Court and serve upon counsel for the Debtor on or before the 8th day of November, 2016, a written objection and shall appear to advocate said

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objection at a Final Hearing to be held at 2:00 p. m. on the 15th day of November, 2016 in Courtroom 3 of the United States Bankruptcy Court, Trenton, New Jersey. In the event no objections are filed or not advocated at such hearing, then this Order shall continue in full force and effect and shall be deemed a Final Order without further notice or hearing in accordance with Federal Rules of Bankruptcy Procedure 4001(d)(3).

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