

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

Chapter 11

In re

DIAL-A-MATTRESS OPERATING CORP., et al.,

Case No. 09- 41966

Debtors.

(Jointly
Administered)



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INTERIM ORDER (A) AUTHORIZING DEBTORS TO OBTAIN POST-PETITION FINANCING FROM NEWCO TRADING LLC ON A SECURED AND SUPER-PRIORITY ADMINISTRATIVE EXPENSE BASIS; (B) SCHEDULING INTERIM AND FINAL HEARING DATES AND TIME FOR OBJECTIONS; (C) AUTHORIZING USE OF CASH COLLATERAL AND FINDING ADEQUATE PROTECTION; AND (D) GRANTING RELATED RELIEF

THIS MATTER having been opened to the Court by Dial-A-Mattress Operating Corp., 1-800-Mattress Corp., and Dial-A-Mattress International Ltd. (collectively, the "**Debtors**"), by and through their proposed counsel, for an interim order (the "**Interim Order**"), among other things: (A) authorizing the Debtors to obtain post-petition financing from Newco Trading LLC ("**Newco**") on a secured and super-priority administrative expense basis; (B) scheduling interim and final hearing dates and times for objections; (C) authorizing use of cash collateral and finding adequate protection; and (D) granting related relief (the "**Motion**").¹ The Motion seeks Court approval of certain post-petition financing on an interim basis which the Debtor wishes to obtain from Newco pursuant to that certain DIP Loan and Security Agreement, dated March 24, 2009 (the "**DIP Loan Agreement**"), filed as an exhibit to the Motion.

The Court, having examined the Motion and the exhibits attached thereto, and having conducted a hearing as provided under Section 364(c) of title 11, Chapter 11, of the United States Code (the "**Bankruptcy Code**"), having conducted a hearing on March 26, 2009 (the "**Hearing**") at which the Court heard the argument of counsel for the Debtors with respect to the immediate financial needs of the Debtors as well as the objections filed by JPMorgan Chase Bank ("**Chase**") and Consolidated Mattress Company, Inc., hereby finds and concludes as follows:

¹ Capitalized terms used but not defined herein shall have the meanings given to such terms in the Motion.

1. On March 17, 2009, Blue Bell Mattress Company, 6225 Jericho Turnpike LLC and Sealy, Inc., as petitioning creditors, filed an involuntary petition against Dial-A-Mattress Operating Corp. ("**Dial**") for relief under chapter 7 of the Bankruptcy Code.

2. On March 23, 2009 (i) Dial filed a motion for order converting its existing chapter 7 case into a voluntary chapter 11 petition (the "**Conversion Motion**"), and (ii) 1-800-Mattress Corp. and Dial-A-Mattress International Ltd., both affiliates of Dial, each filed petitions for relief under Chapter 11 of the bankruptcy code (collectively with the Conversion Petition, the "**Chapter 11 Case**").

3. The Motion was filed on March 24, 2009, and a hearing was heard thereon on March 26, 2009. The hearing is being held pursuant to the authorization of 4001(c)(2) of the Federal Rules of Bankruptcy Procedures (the "**Bankruptcy Rules**").

4. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §1334. This matter is a core proceeding pursuant to 28 U.S.C. §§157(b)(2)(A), (D), (G), (M), and (O), involving matters under 11 U.S.C. §§361, 362, 363 and 364. Venue is proper in this District pursuant to 28 U.S.C. §1409.

5. No official committee of unsecured creditors, as provided for under section 1102 of the Bankruptcy Code, has yet been appointed in this case.

6. Good cause has been shown for the immediate entry of this Interim Order pursuant to 4001(c)(2) of the Bankruptcy Rules. Unless the Debtor is able to immediately obtain post-petition credit, its ability to maintain and preserve its assets and to effectuate an orderly and efficient administration of its estate and the Chapter 11 Case will be seriously jeopardized to the substantial detriment of the Debtors, their estates, and their creditors.

7. The Debtors are unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense pursuant to Sections 364(a) or 364(b) of the Bankruptcy Code.

8. Newco is willing to extend to the Debtor a loan (the "**DIP Loan**") in the amount of Five Hundred Fifty Thousand and 0/100 Dollars (\$550,000.00), pursuant to the terms and conditions set forth in the DIP Loan Agreement and all documents related thereto (collectively, the "**Loan Documents**").

9. The terms and conditions of the DIP Loan, as set forth in the Loan Documents, are fair and reasonable, were negotiated by the parties in good faith, at arms length, and the parties otherwise acted in "good faith" within the meaning and for the purposes of section 364(e) of the Bankruptcy Code.

THEREFORE, IT IS HEREBY

DEM ORDERED, that the Motion is hereby granted to the extent set forth below; and it is further

DEM ORDERED, that the Debtors are authorized to borrow under the DIP Loan to meet operational expenses through the Final Hearing (as defined below); and it is further

DEM ORDERED, that any borrowings under the DIP Loan shall constitute an allowed super-priority administrative expense in the Chapter 11 Case; and it is further

DEM ORDERED, that the DIP Loan shall be secured by the Collateral according to section 5.2(a) of the DIP Loan Agreement. The Collateral shall secure the obligations of the Debtors under the DIP Loan Agreement and all other Loan Documents; and it is further

DEM ORDERED, that the Debtors shall make monthly interest payments to Chase and Rex Bedding Corp. ("**Rex**") during the term of this Order at the contract interest rate as and when such payments would come due under the terms of the respective loan documents; and it is further

DEM ORDERED, that the liens and security interests referred to in the DIP Loan (the "**Liens**") shall be deemed valid and perfected by entry of the Interim Order, as per sections 5.2(d) and 8.5 of the DIP Loan Agreement. Newco shall not be required to undergo any other action whatsoever in any jurisdiction in order to validate or perfect the Liens; and it is further

(a) **DEM ORDERED**, that notwithstanding anything herein, the Superpriority Claim and the Liens granted herein shall remain subject and subordinate to: (a) amounts payable pursuant to 28 U.S.C. §1930(a)(6) and any fees payable to the Clerk of the Bankruptcy Court; (b) fees and expenses of attorneys and other professionals retained in the Chapter 11 cases by the Debtors in the amount not to exceed \$50,000.00 above any prepetition retainer payments received and \$50,000.00 for attorneys and other professionals retained by any official committee of unsecured creditors formed in the Chapter 11 cases to the extent allowed by the Bankruptcy Court (collectively, subsections (a) and (b), the “**Carve-Out**”); (c) any valid and perfected and unavoidable security interests or liens existing on the Voluntary Petition Date including but not limited to Chase and Rex; and it is further

DEM ORDERED, that notwithstanding anything contained herein to the contrary, the Superpriority Administrative Expense Claim shall not be recoverable from, and the Liens shall not attach to, any and all causes of action and proceeds therefrom of the Debtors or their estate under Sections 544, 545, 547, 548, 549, 550 and 724(a) of the Bankruptcy Code; and it is further

DEM ORDERED, that the Debtors are hereby authorized to use the Cash Collateral (as defined in section 363(a) of the Bankruptcy Code) to pay their ordinary and necessary business expenses; and it is further

(b) **DEM ORDERED**, that Chase and Rex shall be granted additional and replacement liens and security interests in the Debtors' property pursuant to Sections 361 and 363(c) of the Bankruptcy Code in respect of the Debtors' use of Cash Collateral (as that term is defined in Section 363(a) of the Bankruptcy Code) and to the same extent and in the same amount and priority as those which existed as of the Voluntary Petition Date; and it is further

DEM ORDERED, that notwithstanding anything to the contrary herein, the rights of the Debtors, any creditor or party in interest, including any official committee of unsecured creditors appointed in these cases (the “**Committee**”), to dispute the priority, validity and/or extent of any liens asserted by Chase, Rex or any other entity are hereby expressly reserved; and it is further

DEM ORDERED, that paragraphs (f), (g), (j), (k), & (q) of Section 9.1 of the DIP Loan Agreement are hereby deleted in their entirety and paragraphs (l) and (m) of Section 9.1 of the DIP Loan Agreement are hereby modified such that the filing of a motion or application seeking an order (i) appointing a trustee or examiner under Section 1104 of the Bankruptcy Code or (ii) converting these Chapter 11 cases shall not constitute an Event of Default under the DIP Loan Agreement; and it is further

DEM ORDERED, the Debtors are authorized to perform all acts, to make, execute and deliver all instruments and documents and to pay fees and all other amounts which may be required or necessary for its performance under the DIP Loan, including, without limitation, the execution and delivery of the DIP Loan; and it is further

DEM ORDERED, that the Debtors and Newco shall make conforming changes to the DIP Loan Agreement to reflect the terms of and relevant dates contained in the Sale Procedures approved on the record of the Hearing and set forth in the Sale Procedures Order submitted to the Court for entry at the conclusion of the Hearing; and it is further

DEM ORDERED, that a copy of this Interim Order, together with a notice of a further hearing to be had upon the Motion, shall be mailed immediately by the Debtors' counsel to the Office of the U. S. Trustee, the Debtors' thirty (30) largest unsecured creditors, all parties who have filed notices of appearance, and all parties who may have a lien, claim or interest in any of the Debtors' assets. All parties in interest shall have until 4:00 p.m. (EDT) on April 9, 2009, to (a) file written objections to the Motion (the "**Objection**") with the Court, and (b) serve the Objection on proposed counsel for the Debtors, counsel for Newco, and counsel for the Committee so as to be received by such counsel by no later than such date and time. The failure of any party to file and serve the Objection by such date and time shall result in a permanent waiver and bar of any and all objections to Motion and this Interim Order; and it is further

DEM ORDERED, that a final hearing on the Motion to approve the DIP Loan shall be held before this Court on April 14, 2009, at 10:00 a.m. (the "**Final Hearing**"). Prior to the Final Hearing, the Debtors are directed to execute and comply with the terms of this Interim Order and the DIP Loan.

Dated: Brooklyn, New York
March 27, 2009

s/Dennis E. Milton
UNITED STATES BANKRUPTCY JUDGE

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