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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re: X

Chapter 11
Case No. 17-71699-REG

MICRO CONTRACT MANUFACTURING, INC.

Debtor.

X

**FINAL ORDER AUTHORIZING THE DEBTOR'S USE OF CASH
COLLATERAL PURSUANT TO §363(c) OF THE BANKRUPTCY CODE
AND PROVIDING ADEQUATE PROTECTION THEREFORE**

Upon the application of Micro Contract Manufacturing Inc., debtor and debtor-in-possession (the "Debtor"), seeking an Order of this Court, pursuant to §§105, 361 and 363 of Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the "Bankruptcy Code") and Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") authorizing the Debtor to use the cash collateral of Tango Capital/Snap Advance and Yellow Stone Capital LLC (the "Lenders") on the terms and conditions described in said application (the "Application") and sufficient and adequate notice of the Application having been given to all other interested parties pursuant to Bankruptcy Rule 4001, and preliminary hearings on the Application having been held before this Court, and upon the record of such hearings the Court having entered that three Interim Orders Authorizing the Use of Cash Collateral Pursuant to

§363(c) of the Bankruptcy Code, the third one dated June 13, 2017 (the “Interim Orders”) which authorized the Debtor to use cash collateral pursuant to the terms thereof and the budget attached thereto pending the final hearing; and there having been no written objections to or appearances in opposition at any of the hearings and a stipulation with the Internal Revenue Service having been “So Ordered” on June 16, 2017; and

The adjourned hearing having been held on July 26, 2017; and Harold M. Somer, Esq. of Harold M. Somer, PC having appeared on behalf of the Debtor, Stan Y. Yang, Esq. having appeared on behalf of the US Trustee’s Office and there having been no appearances on behalf of the Lenders or any other party nor any written objections; and upon the record made at said hearing and the Court having considered all relevant matters related thereto at which time the Court agreed to enter a Final Order upon the same terms and conditions as the Interim Orders and the IRS Stipulation; and sufficient cause appearing therefore it is
FOUND, DETERMINED, AND ADJUDGED THAT:

A. On March 23, 2017, the Debtor filed with this Court a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Pursuant to §§ 1107 and 1108 of the Bankruptcy Code, the Debtor has remained in possession of its assets and has been authorized to continue in the operation and management of its business as a debtor-in-possession.

B. Adequate and sufficient notice of the Application has been provided to all persons entitled thereto under Rule 2002 and 4001 of the Bankruptcy Rules and no further notice of the Application is necessary.

C. This matter constitutes a “core proceeding” within the meaning of 28 U.S.C. §157.

D. This Court has jurisdiction over the parties and the subject matter of this proceeding pursuant to 28 U.S.C. §§ 1334 and 157.

E. Prior to the Petition Date, pursuant to those certain financing agreements the remainder of the Lenders did loan certain funds to the Debtor.

F. To secure such loans, advances and financial accommodations by the Lenders to the Debtor, the Debtor granted Lenders security interests in substantially all of the Debtor's property, including all present and future, then or thereafter acquired, accounts, monies, securities and other property and proceeds thereof, all inventory of any kind or nature, deposit accounts, equipment, fixtures (all of the foregoing collateral described above shall hereinafter be referred to collectively as the "Pre-Petition Collateral"). As of the Petition Date the value of the collateral was approximately \$1,073,600.00.

G. As of the Petition Date, the Debtor was indebted to the Lenders for the principal amount of outstanding cash borrowings, with interests, fees, costs and expenses in an approximate aggregate amount of approximately \$93,000.00. All such loans, advances, and any other such indebtedness, including, without limitation, the principal thereof, interest thereon, and fees, charges, and costs and expenses owing in connection therewith, in each case whether accruing before or after the Petition Date, shall be hereinafter referred to collectively as the "Pre-Petition Indebtedness." As of the petition date the IRS had a secured claim in the approximate amount of \$215,000.

H. As of the Petition Date the Lenders and the IRS were oversecured.

I. The Debtor is permitted to use Cash Collateral on a limited basis and in accordance with the terms and conditions prescribed by this Final Order.

J. It is in the best interest of the Debtor's estate that, in exchange for providing adequate protection to the Lenders, the Debtor be allowed to utilize Cash Collateral under the terms and

conditions set forth herein to permit the Debtor to attempt to reorganize its assets and business operations for the best interest of all parties;

K. The Debtor has requested use of Cash Collateral in order to provide funds to be used solely for the purpose set forth in the budget annexed hereto which may, subject to written application to the Court on notice, be supplemented or extended (the “Budget”);

L. Subject to compliance with the conditions of this Final Order and so long as no Termination Event (as defined below) occurs, the Debtor is permitted to use Cash Collateral during the period, and in the amounts, set forth in the Budget with up to 15% in excess thereof together with the carve out of up to \$25,000.00 and only for the purposes set forth herein.

M. A creditor’s committee, as provided for under §1102 of the Bankruptcy Code, has not been appointed.

N. This Final Order is entered pursuant to, and shall be construed and be consistent with §363 of the Bankruptcy Code and Bankruptcy Rule 4001(b)(2).

O. A continuing need exists for the Debtor, as debtor-in-possession, to use the Cash Collateral of the Lenders as the Debtor has no other available source of working capital to among other things, pay wages, salaries, and purchase inventory and otherwise continue in the operation of its business.

P. The availability to the Debtor of sufficient working capital by the use of Cash Collateral is vital to the ability of the Debtor to sustain its operations. In the absence of such availability, the value of the Debtor’s estate will be quickly eroded. The preservation of such value is of utmost significance and importance to the Debtor’s ability to satisfy its obligations and to propose a plan pursuant to the provisions of Chapter 11 of the Bankruptcy Code.

Q. The Debtor acknowledges that the Debtor's use of Cash Collateral may result in the diminution of the value of the Pre-Petition Collateral and Lenders' and IRS' interests therein, and the Court therefore, grants security interests and liens in favor of the Lenders and the IRS as adequate protection in addition to the interest payments being made to them.

R. This Final Order for the use of cash collateral has been, and shall be deemed to have been, proffered in good faith, as that term is used in the Bankruptcy Code.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Debtor shall be, and hereby is, authorized to collect its receivables and use Cash Collateral on the terms and conditions provided in this Final Order until the earlier of a Termination Notice, as such term is defined herein, or the confirmation of a plan of reorganization. Use Cash Collateral shall be in the amounts set forth in the Budget with up to 15% in excess thereof inclusive of the monthly incremental increases provided for therein together with the carve out of up to \$25,000.00 and only for the purposes set forth in the application.

2. As adequate protection for any Post-Petition diminution in the value of the Lenders' and IRS' interests in the Pre-Petition Collateral, including any diminution in value caused by the Debtor's use of the Pre-Petition Collateral and/or Cash Collateral, the Lenders and the IRS are hereby granted a post-petition claim (the "Adequate Protection Claim") against the Debtor's estate.

3. In order to secure the Adequate Protection Claim, the Lenders and the IRS are hereby granted a first-priority security interest in and a lien in the same order in which their pre-petition liens attached upon (collectively, the "Replacement Lien" or "Post-Petition Lien") the Pre-Petition Collateral and all Post-Petition proceeds thereof (the "Collateral"), whether such

property and assets were acquired by the Debtor before or after the Petition Date, including:

(i) all proceeds of the foregoing; (ii) all accessions to, substitutions and replacements for, and profits and products of the foregoing; (iii) the Pre-Petition Collateral; and (iv) all property of the Debtor, subject only to valid, perfected, enforceable and unavoidable liens and security interests granted by the Debtor to any person or entity other than the Lenders, and which were superior in priority to the Lenders' and the IRS' pre-petition security interests in and liens upon such property of the Debtor on the Petition Date. The Adequate Protection Claim shall have priority in right of payment over any other obligations now in existence or hereafter incurred by the Debtor and over any and all administrative expenses or priority claims of any kind exclusive of the US Trustee's fees and the carve out for professionals or ordered pursuant to, §§ 326, 330, 331, 503(b), 507(a) or 507(b) of the Bankruptcy Code, except as hereinafter provided.

4. Notwithstanding the liens and security interests granted herein to secure the Adequate Protection Claim, the Collateral may be used by the Debtor, if sufficient funds are not otherwise available from the Debtor's estate, to pay (i) the statutory fees of the clerk of the Court and the United States Trustee pursuant to 28 U.S.C. §1930(a) and (ii); any special litigation counsel and counsel that may be retained by the creditors committee pursuant to section 327(e) of the Bankruptcy Code, up to a maximum amount of \$25,000 including for committee counsel in the event a committee is appointed and counsel is retained pursuant to court order in an amount to be determined by separate order.

5. Debtor is hereby authorized and directed to assume, ratify, reaffirm and adopt as its own the pre-petition agreements and related collateral security documents executed in connection therewith, including, without limitation, whatever security interests and liens were granted

thereunder to the Lenders and the IRS in, among other things, the Debtor's pre-petition inventory, accounts receivable and equipment and the products and proceeds thereof.

6. The Debtor waives irrevocably all rights, if any, it might otherwise assert against the Collateral pursuant to Bankruptcy Code § 552(b).

7. The Debtor, at its expense, shall: (a) continue to keep the Collateral fully insured against all loss, peril and hazard; (b) pay any and all post-petition taxes, assessments and governmental charges with respect to such Collateral as provided for in the Budget.

8. The automatic stay provisions of Bankruptcy Code §362 are hereby modified to permit: (a) the Debtor and the Lenders to undertake and perform all acts and take all actions necessary to implement this Final Order; and (b) the Debtor to create, and the Lenders to perfect, any and all liens and security interests granted hereunder; provided, however, that the Lenders shall not be required to file UCC financing statements or other instruments with any other filing authority to perfect the Replacement Lien granted by this Final Order or take any other action to perfect such liens and security interests; if, however, Lenders shall, in their sole discretion, elect for any reason to file, record or serve any such financing statements or other documents with respect to such Replacement Liens, the Debtor shall execute same upon the Lenders' request and the filing, recording or service thereof (as the case may be) shall be deemed to have been made at the time and on the date of the commencement of the Chapter 11 Case on the Petition Date.

9. The occurrence of any of the following shall constitute a termination event ("Termination Event") under this Final Order and Lenders and the IRS shall have no obligation to permit the use of its Cash Collateral and the Debtor's ability to use Cash Collateral shall be terminated if the "cause" upon which such Termination Event is based remains uncured fifteen (15) business days after giving written notice to counsel for the Debtor, the Office of the United

States Trustee and the 20 largest unsecured creditors, detailing the allegations of the alleged Termination Event by fax, and thereafter upon the filing of an affidavit of non-compliance with the Court and giving of written notice thereof by Lenders' or the IRS to the counsel for the Debtor by fax (the "Termination Notice"), with a copy of such Termination Notice to be served upon the Office of the U.S. Trustee by overnight delivery:

(a) the Chapter 11 Case is either dismissed or converted to a case under Chapter 7 of the Bankruptcy Code;

(b) a trustee or an examiner with the expanded powers of a trustee is appointed in the Chapter 11 Case;

(c) any plan of reorganization or liquidation of the Debtor is confirmed which does not provide for the payment in full of the Pre-Petition Obligations in some manner;

(d) the Debtor takes any material action to or ceases operation of its present business or takes any material action that would constitute a disruption in the level of the Debtor's business activity or there shall occur a dissolution or termination of the existence of the Debtor;

(e) this Final Order is reversed, vacated, stayed, amended, or supplemented in a manner that materially and adversely affect the rights of the Lenders hereunder or shall materially and adversely affect the priority of any or all of the Lenders' claims, liens or security interests;

(f) non-compliance or default by the Debtor with any of the terms and provisions of this Final Order or the Budget;

(g) except as set forth in paragraph "14" hereof, the Debtor may exceed the expense items set forth on the Budget by no more than fifteen (15%) percent with respect to any line item and/or fifteen (15%) on a cumulative basis in any weekly period of the total disbursements unless

the Budget is amended with the consent of the Lenders and the IRS which consent shall not be unreasonably withheld or court order.

10. Upon the giving of the Termination Notice by Lenders or the IRS to the Debtor, the Debtor shall immediately segregate all of the Collateral, including without limitation Cash Collateral, and shall not be permitted to use such Collateral absent Lenders' or IRS' prior written consent or order of the Court.

11. The Debtor is directed to keep its books and records of original entry, including without limitation, records of sale, credits authorized (whether or not credit memoranda have been issued), purchases, accounts receivable, cash receipts, and cash disbursements, current and updated, so that all business activity is posted to them in the ordinary course of the Debtor's business.

12. Lenders and the IRS and their professional advisors shall have the right to inspect, audit, examine, check, make copies of or extracts from the books, accounts, checks, orders, invoices, correspondence and other records of the Debtor, and the Debtor shall make all of same available to the Lenders and their representatives during normal business hours.

13. Pursuant to the Application, the Debtor will also pay the Lenders and the IRS as set forth in the Application and Stipulation, respectively.

14. In the event the Debtor does not fully expend the monies as allocated in the Budget, then the unused portion may be accumulated and utilized in subsequent weeks as may be need or for purposes of consummating a confirmed plan of reorganization..

15. Pursuant to, and to the extent of, the provisions of Bankruptcy Code §364(e), the liens and security interests granted by this Final Order shall be binding on the Debtor, its estate and its successors and assigns.

16. Notwithstanding Bankruptcy Rule 7062, the terms and conditions of this Final Order shall: (a) be immediately enforceable pursuant to Bankruptcy Rule 8005; and (b) not be stayed absent: (1) an application by a party in interest for such stay in conformance with such Bankruptcy Rule 8005; and (2) a hearing upon notice to the Debtor, Debtor's attorney, the US Trustee, the Lenders and the IRS.

17. The provisions of this Final Order and any actions taken pursuant hereto shall survive entry of any orders which may be entered confirming any plan of reorganization or which may be entered converting this case from Chapter 11 to Chapter 7 of the Bankruptcy Code; provided, further, that the terms and provisions of this Final Order, as well as the liens and security interests and the Adequate Protection Claim granted shall continue in this or any superseding case under the Bankruptcy Code and the Replacement Lien and the Adequate Protection Claim shall maintain their priority as provided by this Final Order until the Debtor's Pre-Petition Obligations are satisfied in full. The Replacement Lien shall not be subordinated, altered or otherwise adversely affected by any subsequent financing granted to the Debtor and approved pursuant to section 364 of the Bankruptcy Code or any priority granted under sections 105, 364, 503, or 507 of the Bankruptcy Code.

18. The Debtor shall serve by first-class mail a copy of this Final Order upon the Lenders', the United States Trustee, the Debtor's twenty largest creditors and any party having filed a Notice of Appearance within five days of entry of this Order.

**Dated: Central Islip, New York
August 4, 2017**



A handwritten signature in black ink, appearing to read "Robert E. Grossman". The signature is fluid and cursive, with a long horizontal stroke at the end.

**Robert E. Grossman
United States Bankruptcy Judge**