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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	
	:	
INTERNATIONAL SHIPHOLDING CORP.,	:	Chapter 11
	:	
Debtor.	:	Case No. 16-12220 (SMB)
	:	

THE UNITED STATES OF AMERICA'S
OBJECTION TO CONFIRMATION OF CHAPTER 11 PLAN

The United States of America (the "Government"), acting on behalf of the Internal Revenue Service (the "IRS"), by its attorney, Preet Bharara, United States Attorney for the Southern District of New York, objects to Debtor's First Amended Joint Chapter 11 Plan of Reorganization (the "Plan") as follows:[1]

1. Section 2.1.2 of the Plan improperly requires the IRS to file requests for payment of administrative expenses as a condition for such administrative expenses to be paid. (Dkt. No. 506 at 20).

[1] Debtor's counsel consented to an extension to 6:00 pm on February 10, 2017, for the IRS to file objections to the Plan.

2. Pursuant to 11 U.S.C. § 503(b)(1)(D), "a governmental unit shall not be required to file a request for the payment of an expense described in [§ 503(b)(1)(B) or (C)], as a condition of its being an allowed administrative expense." The expenses described in § 503(b)(1)(B) include "any tax . . . incurred by the estate, whether secured or unsecured . . . except a tax of a kind specified in [11 U.S.C. § 507(a)(8)]" or "any tax . . . attributable to an excessive allowance of a tentative carryback adjustment that the estate received, whether the taxable year to which such adjustment relates ended before or after the commencement of the case." The expenses described in § 503(b)(1)(C) include "any fine, penalty, or reduction in credit relating to a tax of a kind specified in [§ 503(b)(1)(B)]." *See, e.g.*, *In re Northern New England Tel. Operations LLC*, 504 B.R. 372, 378 (Bankr. S.D.N.Y. 2014) ("Section 503(b)(1)(D) of the Code excepts governmental units from [the § 503(a)] filing requirement for certain types of expenses, including those described in § 503(b)(1)(B) of the Code.").

3. Accordingly, the Government objects to Section 2.1.2 of the Plan, and requests a new final paragraph be added to that Section:

> Notwithstanding this section or any other provision of this Plan, the United States of America and its agencies, including the Internal Revenue Service ("IRS"), shall not be required to file any request for payment of an Administrative Expense Claim as a condition to allowance of that Administrative Expense Claim, as provided in 11 U.S.C. § 503(b)(1)(D). Any failure of the Debtors to pay a liability for an Administrative Expense Claim shall in no way result in a release or in any manner frustrate the efforts, rights, or abilities of the United States of America and its agencies, including the IRS, to purse collection of the liability pursuant to Title 26 of the United States Code.

4. The Plan, in Section 7.5, also improperly fails to provide for payment of post-petition interest on priority claims of the IRS under the government rate. (*See* Dkt. No. 506 at 43 (disallowing post-petition interest on claims)).

5. Sections 511 and 1129(a)(9)(C) of the Bankruptcy Code provide that the United States may collect post-petition interest on priority tax claims that will be paid in full, when such claims are paid over time. *See* 11 U.S.C. § 511 (describing interest rate applicable where Bankruptcy Code requires payment of interest on tax claim or on an administrative expense tax, or requires the payment of interest to enable a creditor to receive the present value of the allowed amount of a tax claim); 11 U.S.C. § 1129(a)(9)(C) (setting forth requirements for plan's provision of payment of priority claims in regular installment payments, including that such payments are "of a total value, as of the effective date of the plan, equal to the allowed amount of such claim"). The government may collect interest with respect to such claims; otherwise, "the United States' position is that of making a forced loan to the debtor." *In re Mason & Dixon Lines, Inc.*, 71 B.R. 300, 303 (Bankr. M.D.N.C. 1987); *see also In re Architectural Design, Inc.*, 59 B.R. 1019, 1021 (Bankr. W.D. Va. 1986) (explaining that the phrase "value[ ] as of the effective date of the plan" means "that a creditor who is to receive deferred payments is entitled to receive interest in an amount that renders the deferred payments equivalent to the present value of the claim").

6. Accordingly, the Government requests that a second paragraph be added to section 7.5 of the Plan, stating as follows:

> Notwithstanding the foregoing paragraph or any other provision of this Plan, the United States of America and its agencies, including the IRS, shall be entitled to interest accruing on its Priority Tax Claims on or after the Petition Date, determined in accordance with 11 U.S.C. § 511. The Plan does not discharge any debt due the United States not dischargeable under applicable federal law.

7. The Plan also violates 11 U.S.C. § 1129(a)(9)(C) in that it does not provide any schedule for making installment payments. Section 1129(a)(9)(C) clearly indicates that debtors will make "regular installment payments in cash" on a fixed schedule. Payments should not be

left to the Debtor's sole discretion. Indeed, Debtors could theoretically wait years before making any payments to the IRS under the Plan.

8. Finally, the Government objects to a portion of Section 11.5.5 of the Plan, which does not include an adequate police and regulatory exception. In relevant part, Section 11.5.5 provides: "[N]othing in the Plan or Confirmation Order shall discharge, release, impair or otherwise preclude . . . (4) any liability of the Debtors or Reorganized Debtors *under environmental law* to any Governmental Unit (as defined by Bankruptcy Code section 101(27)) as the owner or operator of property that such entity owns or operates after the Confirmation Date." (Dkt. No. 506 at 49 (emphasis added)).

9. Section 11.5.2 of the Plan contains a release whereby certain parties are "deemed to forever release, waive and discharge all claims, demands, rights, Causes of Action or liabilities . . . against any of the Released Parties."[2] To the extent this provision (and the Plan's corresponding exculpation and injunction provisions) purport to bar the United States from exercising its police and regulatory powers, or enjoin proceedings that are not provided for in 11 U.S.C. § 524, such provisions are overly broad and warrant denial of confirmation of the Plan.

10. In the event that the Court intends to approve the Plan, the Government respectfully requests that in order to avoid the releases in the Plan from being construed in an overbroad manner, and to protect the Government's role as regulator, the relevant provision of Section 11.5.5, quoted above, should not be limited solely to environmental law. Instead, the provision should read: "[N]othing in the Plan or Confirmation Order shall discharge, release, impair or otherwise preclude . . . (4) any liability of the Debtors or Reorganized Debtors *under police or regulatory*

[2] Under Section 1.1.110 of the Plan, "Released Parties" include, among others, each Debtor and its current officers and directors, the Unsecured Creditors Committee and each Committee member, and the DIP Agent and each DIP Lender.

statutes or regulations to any Governmental Unit (as defined by section 101(27) of the Bankruptcy Code) as the owner, lessor, lessee or operator of property that such entity owns, operates or leases after the Confirmation Date" (emphasis added to highlight edit). *See, e.g.*, *In re Old Carco LLC (f/k/a Chrysler LLC*), 551 B.R. 124, 129-30 (Bankr. S.D.N.Y. 2016) (discussing similar "police and regulatory" language).

WHEREFORE, the United States of America objects to confirmation of the Plan.

Dated: New York, New York
February 10, 2017

Respectfully submitted,

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