

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: : Chapter 11
: :
CHINACAST EDUCATION CORP., : Case No. 16-13121(MKV)
: :
: :
Debtor. :

**ORDER (A) AUTHORIZING POSTPETITION FINANCING,
(B) GRANTING LIENS AND SECURITY INTERESTS AND
PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS,
AND (C) MODIFYING AUTOMATIC STAY, PURSUANT TO 11 U.S.C. §§ 105,
362, 363 AND 364 AND FEDERAL RULES OF BANKRUPTCY PROCEDURE
2002 AND 4001(c) AND (d) AND LOCAL BANKRUPTCY RULE 4001-2(a)**

This matter having come before the Court on the motion dated February 28, 2017 (the "**Motion**") [ECF No. 6] of ChinaCast Education Corp. (the "**Debtor**"), as debtor and debtor-in-possession, for an order under 11 U.S.C. §§ 105, 362, 363 and 364 and Federal Rules of Bankruptcy Procedure 2002 and 4001(c) and (d) and Local Bankruptcy Rule 4001-2(a), providing:¹

(i) authorization for the Debtor to obtain secured postpetition financing (the "**DIP Facility**") in an amount not greater than \$324,000 (the "**Maximum Borrowing**") pursuant to the terms and conditions set forth in this final order (the "**Financing Order**") and that certain Debtor-In-Possession Term Loan Promissory Note (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "**DIP Note**"), together with all agreements, documents, and instruments delivered in connection with the DIP Facility (collectively, and including the DIP Note, the "**DIP Loan Documents**") by and among the Debtor, Fir Tree, Inc., as administrative agent (the "**DIP Agent**"), and the lenders party thereto (the "**DIP Lenders**", together with the "DIP Agent," the "**DIP Parties**");²

(ii) authorization for the Debtor to execute the DIP Note and other DIP Loan Documents and to perform such other acts as may be necessary or desirable in connection with the DIP Facility;

¹ Unless otherwise defined, capitalized terms used herein have the meanings ascribed to them in the Motion or the DIP Note (as defined below), as applicable.

² Pursuant to Local Bankruptcy Rule 4001-2, a summary of certain material provisions of the DIP Note is set forth in Annex 1 hereto.

(iii) authorization for the Debtor to grant to the DIP Parties first priority liens upon and security interests in substantially all of their assets, to secure all obligations owing under the DIP Loan Documents (collectively, and including, without limitation, all "Obligations" as defined in the DIP Note, the "**DIP Obligations**"), subject and subordinate only to the Carve-Out (as defined in Paragraph 11 below); and

(iv) authorization to grant allowed superpriority administrative expense claims to the DIP Parties, subject and subordinate only to the Carve-Out;

and it appearing appropriate notice under Bankruptcy Rules 2002 and 4001 having been given; and upon the record of the hearing held on March 23, 2017; and no objections having been filed; and based upon all the pleadings filed with the Court and the evidence presented; and the Court having noted the appearances of all parties in interest; and it appearing that the relief requested in the Motion is in the best interests of the Debtor, its estate and creditors; and after due deliberation and consideration, and sufficient cause appearing therefor:

IT IS HEREBY FOUND:³

A. Purpose and Necessity of Financing. The Debtor requires the DIP Facility to enable it to fund continuing actions to pursue certain recoveries (the "**Recovery Actions**") as further explained in the *Declaration of Douglas Woodrum Pursuant to Local Bankruptcy Rules 1007-2 and 9077-1* [Dkt. No. 4] ("First Day Declaration") and Declaration of Douglas Woodrum attached to the Motion as Exhibit A; and the Debtor is unable to obtain adequate unsecured credit allowable as an administrative expense under section 503 of the Bankruptcy Code, or other financing under sections 364(c) or (d) of the Bankruptcy Code, on equal or more favorable terms than those set forth in the DIP Loan Documents.

³ Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, pursuant to Bankruptcy Rule 7052.

B. Good Cause Shown. Good cause has been shown for entry of this Financing Order.

C. Good Faith. Based upon the record before the Court, the DIP Loan Documents have been negotiated in good faith and at arm's-length between the Debtor and the DIP Parties.

D. Fair Consideration & Reasonably Equivalent Value. The Debtor will receive and has received fair and reasonable consideration in exchange for access to the DIP Facility and all other financial accommodations provided under the DIP Loan Documents and this Financing Order.

Based upon the foregoing findings, and upon the record made before this Court, it is hereby ORDERED:

1. The Motion is granted on the terms set forth in this Financing Order; the terms and provisions of the DIP Loan Documents are approved as set forth in the Motion and in the DIP Loan Documents.

2. The Debtor is hereby authorized to incur and perform the DIP Obligations subject to the DIP Loan Documents and this Financing Order, with borrowings under the DIP Note up to the aggregate principal amount of the Maximum Borrowing.

3. The Debtor is authorized and directed to negotiate, prepare, enter into, and deliver the DIP Loan Documents, including any amendments, modifications, supplements or restatements thereto and related documents.

4. Upon the occurrence of an Event of Default, the DIP Parties shall be entitled to exercise any and all rights and remedies available under the DIP Loan Documents without further order of the Court, subject to paragraph 13 below.

5. All fees payable, plus costs reimbursable under the DIP Loan Documents (including, without limitation, the DIP Parties' attorneys' fees and expenses), are hereby approved and authorized to be paid.

6. To secure the DIP Obligations, pursuant to Section 364(c)(2) of the Bankruptcy Code, the DIP Agent, on behalf of and for the benefit of itself and the DIP Lenders, is hereby granted valid and fully perfected, by operation of law immediately upon the entry of this financing order, first priority liens upon and senior security interests (collectively, the "**DIP Liens**") in all of the property, assets or interests in property or assets of the Debtor, of any kind or nature whatsoever, real or personal, now existing or hereafter acquired or created, including, without limitation, all property of the estate of the Debtor, including, without limitation, all commercial tort claims and the proceeds of all Avoidance Actions and Recovery Actions, and all cash and non-cash proceeds, and profits of any of the collateral described above (collectively, the "**DIP Collateral**"), subject only to the Carve-Out.

7. The DIP Liens shall be effective immediately upon the entry of this Financing Order and shall not at any time be made subject or subordinated to, or made *pari passu* with any other lien, security interest or claim existing as of the Petition Date, or created under sections 363 or 364(c) or (d) of the Bankruptcy Code or otherwise, other than the Carve-Out.

8. The DIP Agent, on behalf of and for the benefit of itself and the DIP Lenders, is hereby granted an allowed superpriority administrative expense claim (the "**DIP Superpriority Claim**") pursuant to section 364(c)(1) of the Bankruptcy Code in this case and in any successor chapter 7 case under the Bankruptcy Code for all DIP Obligations with priority, except as set forth below, over any and all other claims against the Debtor, now existing or

hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kinds specified in or arising or ordered under sections 105(a), 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726, 1113, and 1114 and any other provision of the Bankruptcy Code, subordinate only to payment of the Carve-Out expenses.

9. The DIP Liens, DIP Superpriority Claim, and other rights and remedies granted to the DIP Parties shall continue and shall be valid and enforceable against any trustee appointed in this chapter 11 case or in any chapter 7 case for the Debtor, and subject only to the Carve-Out as provided in this Final Order until all the DIP Obligations have been indefeasibly paid in full in cash.

10. The DIP Liens and the DIP Superpriority Claim shall be subject only to: (i) professional fees and expenses of the Debtor paid after such Event of Default (irrespective of when incurred or accrued) by the Debtor, as and when allowed on a final basis pursuant to section 330 of the Bankruptcy Code, in an aggregate amount not to exceed \$10,000, (ii) the costs and expenses of any Chapter 7 trustee appointed for the Borrower in an aggregate amount not to exceed \$10,000, and (iii) fees payable to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6) plus interest pursuant to 31 U.S.C. § 3717 (together, the "**Carve-Out**").

11. Unless and until the DIP Loans are indefeasibly paid in full by cash, no proceeds from the DIP Loans or DIP Collateral, or proceeds thereof may be used by the Debtor, any committee, any party or any trustee appointed in this chapter 11 case or in any successor Chapter 7 case, for any purpose whatsoever other than the pursuit of the Recovery Actions and/or the payment of any fees, costs, expenses or other amounts authorized by this Financing Order.

12. The automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified without further application to or order from the Court to the extent necessary to permit the DIP Parties, upon the occurrence of an Event of Default, and without any interference from the Debtor or any other party in interest, under Bankruptcy Code Section 105(a) or any other applicable law, to exercise all rights and remedies provided for in the DIP Loan Documents, but subject to seven (7) days' prior written notice (which may be delivered by electronic mail) (the "**Remedies Notice Period**") to the Debtor, its counsel, the Debtor's twenty largest unsecured creditors, and the U.S. Trustee.

13. Following the occurrence of an Event of Default, all proceeds of DIP Collateral shall be applied as follows: (a) first, to fund the Carve-Out; (b) second, in the event that the DIP Parties seek payment or reimbursement of their fees and expenses, to repay all reasonable fees and expenses incurred by the DIP Parties pursuant to the DIP Loan Documents and; (c) third, to repay the DIP Obligations, and (d) fourth, thereafter, to the Debtor's estate.

14. To the extent of any conflict between or among (a) the terms or provisions of the DIP Loan Documents, the Motion and any other agreement, and (b) this Financing Order, the terms and provisions of this Financing Order shall govern.

15. This Financing Order shall take effect immediately upon execution hereof, notwithstanding the possible application of Fed. R. Bankr. P. 6004(g), 7062, 9014, or otherwise, and the Clerk of the Court is hereby directed to enter this Financing Order on the Court's docket.

16. This Court shall retain exclusive jurisdiction over all matters pertaining to the implementation, interpretation and enforcement of this Financing Order and to enter any

orders required by the provisions of this Financing Order.

Dated: New York, New York
March 27, 2017

s/ Mary Kay Vyskocil
HONORABLE MARY KAY VYSKOCIL
UNITED STATES BANKRUPTCY JUDGE

ANNEX I

Summary of Material Terms of Proposed Financing

- Amount of DIP Loan: \$324,000
- Material Conditions to Loan: To be used only for continued funding of Avoidance and Recovery Litigation plus Carve-Out; administrative expenses, including Debtor's professionals.
- Pricing/Economic Terms: DIP Lender's actual legal fees up to a cap of \$30,000; 20% interest per annum, payable in kind.
- No Effect on Existing Liens: (None).
- First Priority Lien on All Assets.
- Super-Priority Administrative Claim: Subject only to Carve-Out.
- Carve-Out: Anytime after default (a) Debtor's professional fees (\$10,000); (b) Chapter 7 trustee (\$10,000); and (c) fees payable to U.S. Trustee plus interest.
- No Cross-Collateralization
- No Roll-Up Provision
- No Restriction of Court's Power or Discretion or Limit on Fiduciary Powers.
- Sole Limitation on funding: only for Avoidance and Recovery Litigation.
- Default Provisions: Customary
- No Change of Control Provisions.
- No Asset Sale Deadline.
- No Limit on Ability To Pay in full During Pendency of Case, subject to prepayment fee.
- No Acknowledgment of Prepetition Claims.
- Deadline for Confirmation of Plan: May 3, 2017.
- Modification of Stay: On default's or to record lien.
- No Waiver of Estate Claims.
- No Waiver or Modification of Plan Filing Exclusivity.

- No Waiver of Surcharge Right.
- No Adequate Protection Requirement.
- Termination and Default Provisions: Customary.