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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	:	Chapter 11
	:	
ELETSON HOLDINGS INC., et al.,	:	Case No. 23-10322 (JPM)
	:	
	:	(Jointly Administered)
Debtors. ¹	:	
	:	
-----X	:	

**PETITIONING CREDITORS' MOTION FOR ENTRY OF AN
ORDER APPROVING THE DISCLOSURE STATEMENT IN SUPPORT
OF THE PETITIONING CREDITORS' CHAPTER 11 OVERBID PLAN
FOR ELETSON HOLDINGS INC. AND ITS AFFILIATED DEBTORS**

The Petitioning Creditors, by and through their undersigned counsel, hereby submit this motion (the "Motion") pursuant to section 1125 of title 11 of the United States Code (the "Bankruptcy Code"), Rule 3017 of the Federal Rules of Bankruptcy Procedures (the "Bankruptcy Rules"), and Rule 3017-1 of the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules") seeking approval of the *Disclosure Statement in Support of Petitioning Creditors' Overbid Chapter 11*

¹ The Debtors in these cases are: Eletson Holdings Inc., Eletson Finance (US) LLC, and Agathonissos Finance LLC. The address of the Debtors' corporate headquarters is 118 Kolokotroni Street, GR 185 35 Piraeus, Greece. The Debtors' mailing address is c/o Eletson Maritime, Inc., 1 Landmark Square, Suite 424, Stamford, Connecticut 06901.



Plan for Eletson Holdings Inc. and its Affiliated Debtors (as may be amended, modified, and/or supplemented from time to time, the “PC Overbid Disclosure Statement”),² filed substantially contemporaneously herewith, relating to the *Petitioning Creditors’ Overbid Chapter 11 Plan for Eletson Holdings Inc. and its Affiliated Debtors* (as may be amended, modified, and/or supplemented from time to time, the “PC Overbid Plan”), filed substantially contemporaneously herewith, and respectfully state:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the Southern District of New York (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.) (the “Amended Standing Order”). The Petitioning Creditors confirm their consent, pursuant to Bankruptcy Rule 7008, to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The bases for relief requested in this Motion is section 1125 of the Bankruptcy Code, Bankruptcy Rule 3017, and Local Rule 3017-1.

BACKGROUND

A. The Competing Plans and Disclosure Statements

4. On January 23, 2024, the Debtors filed a proposed chapter 11 plan of reorganization [Docket No. 370] (the “Debtors’ Plan”) and related disclosure statement

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the PC Overbid Disclosure Statement.

[Docket No. 371] (the “Debtors’ Disclosure Statement”), each of which was subsequently amended and revised multiple times. *See* Docket Nos. 570, 621, 671, 672, 725, and 726.

5. On March 26, 2024, the Petitioning Creditors filed their own chapter 11 plan [Docket No. 531] and related disclosure statement [Docket No. 532], which were both subsequently revised on May 13 and 14, 2024 [Docket Nos. 663, 664, 695, & 696], and again on June 6, 2024 [Docket Nos. 740, Ex. 1 & 741, Ex. 1] (respectively, the “PC Plan” and the “PC Disclosure Statement”).³

6. At a hearing on May 15, 2024 (the “May Hearing”) the Court approved the PC Disclosure Statement as having adequate information, but withheld entry of an order approving the PC Disclosure Statement for solicitation pending further hearings with respect to the Debtors’ Disclosure Statement.

B. The PC Overbid Chapter 11 Plan

7. The Petitioning Creditors believe that the Debtors’ Disclosure Statement lacks adequate information, describes a chapter 11 plan that is patently unconfirmable, and should not be approved for solicitation. In addition, the PC Plan provides for significantly better returns to creditors and is consistent with the Bankruptcy Code. However, the Petitioning Creditors also believe that, to the extent that the Debtors are permitted to solicit the Debtors’ Plan, creditors should receive the highest and best version of that plan.

8. On June 5, 2024, the Petitioning Creditors submitted to counsel for the Debtors and the Creditors’ Committee a term sheet, which was subsequently filed on

³ The Debtors’ Plan and the PC Amended Plan are referred to herein as the “Competing Plans”.

June 6, 2024 [Docket No. 745] (the “Term Sheet”). On the date hereof, the Petitioning Creditors filed the PC Overbid Plan incorporating the Term Sheet.⁴

9. The PC Overbid Plan sets forth the terms of a comprehensive restructuring of the existing debt and other obligations of the Debtors that is based on the Debtors’ Plan with the modifications described in the Term Sheet.

The modifications to the Debtors’ Plan include a number of improvements for general unsecured creditors, including, among others:

- a. Higher New Money Investment: The PC Overbid Plan provides for a new money investment by one of the Petitioning Creditors, Pach Shemen LLC or its designee (in such capacity, the “Plan Sponsor”), of \$33 million (compared to the \$30 million Shareholder New Value Contribution under the Debtors’ Plan. The \$33 million amount will be used to pay administrative and priority claims, make distributions to creditors under the PC Overbid Plan, and fund the Litigation Trust.
- b. The Debtors have not provided any financial wherewithal that the Debtors’ shareholders have sufficient readily available funds, in cash, to make the \$30 million Shareholder New Value Contribution under the Debtors’ Plan. The Plan Sponsor, however, has submitted the financial wherewithal to make the Plan Sponsor’s \$33 million investment, , a copy of which is attached as Appendix D to the PC Overbid Disclosure Statement.
- c. Higher Returns to Exchange Note Claims: The PC Overbid Plan provides significantly improved recoveries to holders of Exchange Note Claims (Class 6) by transferring nearly all of the Debtors’ claims and causes of action (including both known and unknown claims), such as the claims related to the transfer of the Preferred Shares, among others, to the Litigation Trust for the benefit of noteholder creditors that receive Litigation Trust Interests rather than just those claims and causes of action identified by the Debtors.
- d. The Litigation Trust will also receive a contingent value right (or CVR) from the Plan Sponsor equal to the amount that would otherwise be payable by Levona under the Debtors’ Plan as the “Collections Contribution,” *provided that*, to further improve creditors’ recoveries, the CVR would be payable without deduction for the costs and risks of

⁴ A slightly modified version of the Term Sheet is attached as Appendix C to the PC Overbid DS, which reflects minor modifications to the PC Overbid Plan from the version previously filed on the docket.

collection as the Collections Contribution would otherwise be paid under the Debtors' Plan.⁵

- e. In addition to all other payments to the Litigation Trust set forth in the Debtors' Plan, the PC Overbid Plan provides that the Litigation Trust will receive any excess in the professional fee escrow account set aside on the Effective Date to the extent there are savings due to reductions in allowed administrative expense claims for estate professionals.
- f. Higher Returns to Noteholder Creditors: The PC Overbid Plan increases the funds set aside to pay Noteholder Election Recovery Claims (Class 5) from up to \$70,000 to up to \$100,000 per claim and increases the Noteholder Election Recovery Reserve from \$7 million to \$8 million.⁶
- g. Higher Returns to Guaranty Creditors: The PC Overbid Plan unimpairs the OCM Guaranty Claims (Class 1), whereas the Debtors' Plan impairs such claims at 50%, and the PC Overbid Plan increases the cash pool for the Eletson Corporation Guaranty Recovery from \$1 million to \$1.25 million (and maintains the same 50% impairment of such Claims) but also provides such holders with an option, at their election to receive their pro rata share of \$3 million in lieu of having a continued guaranty claim.

10. The Petitioning Creditors intend to move forward with soliciting votes on the PC Overbid Plan solely to the extent that the Court approves the Debtors' Plan for solicitation. As such, the Petitioning Creditors have filed this Motion such that the PC Overbid Disclosure Statement can be considered at the hearing to be held on June 18, 2024 at the same time that the Court considers approval of the further revised PC Disclosure Statement and the Debtors' Disclosure Statement.

⁵ The CVRs will be secured by a pledge of 100% of the Plan Sponsor's equity in the Reorganized Debtors.

⁶ The Petitioning Creditors believe that the treatment provided by Class 5 in the Debtors' Plan violates the Bankruptcy Code and will not be approved. In such a case, the PC Overbid Plan provides that holders of Noteholder Election Recovery Claims will receive their pro rata share of a \$8 million cash pool. The Debtors' Plan, on the other hand, provides that if the Court does not approve the Noteholder Election Recovery Claims treatment, such Claims will no longer receive cash and instead be moved to Class 6A/6B and be treated together with hundreds of millions of dollars of other noteholder claims in sharing in their pro rata share of the Litigation Trust Interests.

RELIEF REQUESTED

11. By this Motion, the Petitioning Creditors respectfully request that the Court approve the PC Overbid Disclosure Statement as providing “adequate information” within the meaning of section 1125(a) of the Bankruptcy Code. The form of order approving this Motion will be set forth in any order(s) of the Court approving the Debtors’ Disclosure Statement and establishing the procedures for joint solicitation.

BASIS FOR RELIEF

12. Section 1125 of the Bankruptcy Code provides that, before a debtor may solicit votes on a Chapter 11 plan, it must provide its creditors with a disclosure statement that is “approved, after notice and a hearing, by the court as containing adequate information.” 11 U.S.C. § 1125(b). Section 1125 of the Bankruptcy Code defines “adequate information” as follows:

[i]nformation of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records . . . that would enable . . . a hypothetical investor of the relevant class to make an informed judgment about the plan.

11 U.S.C. § 1125(a)(1).

13. A disclosure statement must, as a whole, provide information that is “reasonably practicable” to permit an “informed judgment” by impaired creditors or interest holders on whether to vote for or against the proposed plan of reorganization. *See In re Momentum Mfg. Corp.*, 25 F.3d 1132, 1136 (2d Cir. 1994); *see also In re Adelphia Commc’ns Corp.*, 352 B.R. 592, 600 (Bankr. S.D.N.Y. 2006) (noting that “an adequate disclosure determination requires a bankruptcy court to find not just that there is enough information, but also that what is said is not misleading”). The disclosure statement should inform the “average unsecured creditor ‘what it is going to get, when it is going to get it, and what contingencies there are to getting its distribution.’” *In re*

Radco Props., Inc., 402 B.R. 666, 683 (Bankr. E.D.N.C. 2009) (quoting *In re Ferretti*, 128 B.R. 16, 19 (Bankr. D.N.H. 1991)). In examining the adequacy of the information contained in a disclosure statement, a bankruptcy court has broad discretion. See *In re WorldCom, Inc.*, No. M-47 HB, 2003 WL 21498904, at *10 (S.D.N.Y. June 30, 2003); see also *Kirk v. Texaco, Inc.*, 82 B.R. 678, 682 (S.D.N.Y. 1988) (noting that “[t]he legislative history could hardly be more clear in granting broad discretion to bankruptcy judges under § 1125(a)”). This grant of discretion is intended to permit courts to tailor disclosures made in connection with solicitation to facilitate the effective reorganization of debtors in a broad range of businesses and circumstances. See H.R. Rep. 95-595, 95th Cong., 1st Sess., 408–09 (1977); *Texaco*, 82 B.R. at 682 (bankruptcy judges have a clear congressional mandate to exercise “broad discretion in their supervision of corporate reorganizations”).

14. Accordingly, the determination of whether a disclosure statement contains adequate information is made on a case-by-case basis, focusing on the unique facts and circumstances of each case. In that regard, courts generally examine whether a disclosure statement contains such information as:

- (a) the circumstances that gave rise to the filing of the bankruptcy petition;
- (b) a complete description of the available assets and their value;
- (c) the anticipated future of the debtor;
- (d) the source of the information provided in the disclosure statement;
- (e) a disclaimer, which typically indicates that no statements or information concerning the debtor or its assets or securities are authorized other than those set forth in the disclosure statement;
- (f) the condition and performance of the debtor while in chapter 11;
- (g) information regarding claims against the estate;

- (h) a liquidation analysis setting forth the estimated return that creditors would receive under chapter 7;
- (i) the accounting and valuation methods used to produce the financial information in the disclosure statement;
- (j) information regarding the future management of the debtor, including the amount of compensation to be paid to any insiders, directors, and/or officers of the debtor;
- (k) a summary of the plan;
- (l) an estimate of all administrative expenses, including attorneys' fees and accountants' fees;
- (m) the collectability of any accounts receivable;
- (n) any financial information, valuations, or pro forma projections that would be relevant to creditors' determinations of whether to accept or reject the plan;
- (o) information relevant to the risks being taken by the creditors and interest holders;
- (p) the actual or projected value that can be obtained from avoidable transfers;
- (q) the existence, likelihood, and possible success of non-bankruptcy litigation;
- (r) the tax consequences of the plan; and
- (s) the relationship of the debtor with its affiliates.

See In re Scioto Valley Mortg. Co., 88 B.R. 168, 170–71 (Bankr. S.D. Ohio 1988); *see also In re Source Enters. Inc.*, Case No. 06-11707 (AJG), at *4 (Bankr. S.D.N.Y. July 31, 2007) [Docket No. 322] (slip op.) (using similar criteria and citing *Scioto Valley*, 88 B.R. at 170–71); *see also In re Copy Crafters Quickprint, Inc.*, 92 B.R. 973, 979 (Bankr. N.D.N.Y. 1988) (explaining that the adequacy of disclosure statement “is to be determined on a case-specific basis under a flexible standard . . .”).

15. The Petitioning Creditors submit that the PC Overbid Disclosure Statement contains adequate information within the meaning of section 1125 of the

Bankruptcy Code. The PC Overbid Disclosure Statement contains descriptions and summaries of, among other things: (a) certain events preceding the filing of the Involuntary Petitions; (b) events leading to the conversion of these cases to the Chapter 11 Cases; (c) developments during these Chapter 11 Cases; (d) material terms of the PC Overbid Plan and its implementation; (e) Claims asserted against the Debtors' estates; (f) risk factors affecting the PC Overbid Plan; (g) financial information that could be relevant to creditors' determinations of whether to accept or reject the PC Overbid Plan; and (h) a description of the exculpation provisions of the PC Overbid Plan.⁷

16. Accordingly, the Petitioning Creditors submit that the PC Overbid Disclosure Statement should be approved as it contains adequate information within the meaning of section 1125(a)(1) of the Bankruptcy Code and otherwise comports with applicable law.

NOTICE

17. On June 7, 2024, the Petitioning Creditors served notice of the hearing on this Motion on: (a) the U.S. Trustee; (b) counsel to the Debtors; (c) counsel to the Creditors' Committee; (d) the Internal Revenue Service; (e) the Securities and Exchange Commission; (f) holders of Claims against the Debtors that have filed proofs of claim (either pre-petition or administrative) as of the date of this Motion, as they appear and at the addresses set forth in such proofs of claim; (g) holders of Claims against the Debtors, as they appear in the Schedules; (h) any party that has requested notice pursuant to Bankruptcy Rule 2002; (i) any other party entitled to notice pursuant to

⁷ Some of the foregoing information is incorporated by reference from the PC Overbid Disclosure Statement.

Local Rule 9013-1(b); (j) all other entities on the Debtors' list of unsecured creditors to the extent not included in the foregoing (a) through (j). *See* Docket No. 759.

The Petitioning Creditors submit that, in light of the nature of the relief requested, no other or further notice need be provided.

CONCLUSION

WHEREFORE, the Petitioning Creditors respectfully request this Court grant the relief requested herein and grant such other and further relief as may be just and proper.

DATED: June 11, 2024
New York, New York

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