



ENTERED
07/13/2020

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

----- X
In re: : Chapter 11
: :
HI-CRUSH INC., *et al.*,¹ : Case No. 20-33495 (DRJ)
: :
Debtors. : (Jointly Administered)
: :
----- X

**ORDER (I) AUTHORIZING PAYMENT OF (A) PREPETITION
CLAIMS OF THE CRITICAL VENDORS AND (B) 503(b)(9) CLAIMS;
(II) AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR AND PROCESS
RELATED CHECKS AND TRANSFERS; AND (III) GRANTING RELATED RELIEF**

[Relates to Motion at Docket No. 13]

Upon the motion (the “**Motion**”)² of the Debtors for an Order (i) authorizing, but not directing, the Debtors to pay, in the ordinary course of business, the prepetition fixed, liquidated, and undisputed claims of (a) the Critical Vendors, subject to the conditions described in the Motion, and (b) the 503(b)(9) Claimants, (ii) authorizing financial institutions to honor and process related checks and transfers, and (iii) granting certain related relief; and the Court having reviewed the Motion and the First Day Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Hi-Crush Inc. (0530), OnCore Processing LLC (9403), Hi-Crush Augusta LLC (0668), Hi-Crush Whitehall LLC (5562), PDQ Properties LLC (9169), Hi-Crush Wyeville Operating LLC (5797), D & I Silica, LLC (9957), Hi-Crush Blair LLC (7094), Hi-Crush LMS LLC, Hi-Crush Investments Inc. (6547), Hi-Crush Permian Sand LLC, Hi-Crush Proppants LLC (0770), Hi-Crush PODS LLC, Hi-Crush Canada Inc. (9195), Hi-Crush Holdings LLC, Hi-Crush Services LLC (6206), BulkTracer Holdings LLC (4085), Pronghorn Logistics Holdings, LLC (5223), FB Industries USA Inc. (8208), PropDispatch LLC, Pronghorn Logistics, LLC (4547), and FB Logistics, LLC (8641). The Debtors’ address is 1330 Post Oak Blvd, Suite 600, Houston, Texas 77056.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.



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final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and all objections, if any, to entry of this Order having been withdrawn, resolved, or overruled; and upon the record herein; and after due deliberation thereon; and the Court having determined that there is good and sufficient cause for the relief granted in this Order, it is hereby

ORDERED THAT:

1. The Debtors are authorized, but not directed, in their sole discretion, to pay, or cause to be paid, the Critical Vendor Claims of the Critical Vendors, subject to the terms and conditions of this Order.

2. The Debtors are authorized, but not directed, to undertake appropriate efforts to cause the Critical Vendors to enter into a Trade Agreement with the Debtors substantially similar to the form attached as Exhibit A to this Order, as a condition of payment of each Critical Vendor Claim.

3. If a Critical Vendor, whether under a Trade Agreement or otherwise, refuses to supply goods and/or services to the Debtors on Customary Trade Terms or Minimum Credit Terms (or such other terms as are agreed by the parties) following receipt of payment on its Critical Vendor Claims or otherwise fails to comply with any Trade Agreement entered into between such Critical Vendor and the Debtors, then the Debtors reserve their rights to take any and all actions necessary to return the parties to the positions they held immediately prior to entry of this Order with respect to all prepetition claims, including but not limited to: (i) declaring that any Trade Agreement between the Debtors and such Critical Vendor is terminated; (ii) declaring that

payments made to such Critical Vendor on account of its Critical Vendor Claims shall be deemed to have been made in payment of then-outstanding (or subsequently accruing) postpetition claims of such Critical Vendor without further order of the Court or action by any person or entity; and (iii) recovering or seeking disgorgement of any payment made to such Critical Vendor on account of its Critical Vendor Claims to the extent that such payments exceed the value of the postpetition claims of such Critical Vendor, without giving effect to any rights of setoff, claims, provision for payment of reclamation or trust fund claims, or other defense. Nothing herein shall constitute a waiver of the Debtors' rights to seek damages or other appropriate remedies against any breaching Critical Vendor.

4. Notwithstanding the foregoing, the Debtors may, in their sole discretion, reinstate a Trade Agreement if the underlying default under the Trade Agreement is fully cured by the Critical Vendor not later than five business days following the Debtors' notification to the Critical Vendor that such default has occurred or the Debtors, in their sole discretion, reach a favorable alternative agreement with the Critical Vendor.

5. The amount of each Critical Vendor Claim set forth in connection with a Trade Agreement shall be used only for purposes of determining such Critical Vendor Claim for purposes of this Order and shall not be deemed a claim allowed by the Court, and the rights of all interested persons to object to the allowance of such claim shall be fully preserved until further order of the Court. Further, signing a Trade Agreement containing a claim amount for purposes of this Order shall not excuse such Critical Vendor from filing a proof of claim in these cases.

6. No claimant who receives payment in full on account of a Critical Vendor Claim is permitted to, with respect to such Critical Vendor Claim, file or perfect a Lien on account of such claim, assert a Reclamation Claim, and/or assert a 503(b)(9) Claim, and any such claimant shall

take all necessary action, at its expense, to remove any existing Lien relating to such claim, and to withdraw any Reclamation Claim or 503(b)(9) Claim, on account of such claim.

7. The Debtors are authorized, but not directed, in their sole discretion, to pay, or cause to be paid, the 503(b)(9) Claims of the 503(b)(9) Claimants or Critical Vendors.

8. Each of the Banks at which the Debtors maintain their accounts relating to the payment of the Critical Vendor Claims and 503(b)(9) Claims are authorized to: (i) receive, process, honor, and pay all checks presented for payment and to honor all fund transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts; and (ii) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of the Court, whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise.

9. The Debtors are authorized, but not directed, to issue new postpetition checks, or effect new electronic funds transfers, on account of the Critical Vendor Claims and 503(b)(9) Claims as set forth herein and to replace any prepetition checks or electronic fund transfer requests that may be lost or dishonored or rejected as a result of the commencement of the Debtors' Chapter 11 Cases.

10. Notwithstanding anything to the contrary contained herein, (i) any payment made, or to be made, or authorization contained hereunder shall be subject to the requirements imposed on the Debtors under any order approving a postpetition financing facility or any order regarding the use of cash collateral approved by this Court in these Chapter 11 Cases (collectively, the "**DIP Orders**"), and (ii) to the extent there is any inconsistency between the terms of the DIP Orders and any action taken or proposed to be taken hereunder, the terms of the DIP Orders shall control.

For the avoidance of doubt, the Debtors are not authorized to make any payments pursuant to this Order except as permitted by the Budget (as defined in the DIP Orders).

11. The Debtors shall maintain a matrix/schedule of amounts directly or indirectly paid, subject to the terms and conditions of this Order, including the following information: (a) the names of the payee; (b) the amount of the payment; (c) the category or type of payment, as further described and classified in the Motion; (d) the Debtor or Debtors that made the payment; and (e) the payment date. The Debtors shall provide a copy of such matrix/schedule to the U.S. Trustee, the Ad Hoc Group, and any statutory committee appointed in these Chapter 11 Cases every 30 days beginning upon entry of this Order.

12. Nothing in the Motion or this Order, or the Debtors' payment of any claims pursuant to this Order, shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim, a Critical Vendor Claim or a 503(b)(9) Claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Order. Nothing contained in this Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

13. Nothing in the Motion or this Order, nor the Debtors' implementation of the relief granted in this Order, shall be deemed to modify or waive any of the Debtors' rights with respect to goods and services requested or received from the Critical Vendors, including the Debtors'

rights to (i) cancel a purchase order, (ii) decline the acceptance of goods and/or services, (iii) return any defective, nonconforming, or unacceptable good, or (vi) contest the amount of any invoice or claims on any grounds.

14. Nothing herein shall impair or prejudice the rights of the U.S. Trustee, the Ad Hoc Group, and any statutory committee appointed in these Chapter 11 Cases, which are expressly reserved, to object to any payment made pursuant to this Order to an insider (as such term is defined in section 101(31) of the Bankruptcy Code), or an affiliate of an insider, of the Debtors. To the extent the Debtors intend to make a payment to an insider or an affiliate of an insider of the Debtors, the Debtors shall, to the extent reasonably practicable, provide three (3) business days' advance notice to, and opportunity to object by the U.S. Trustee, the Ad Hoc Group, and any statutory committee appointed in these Chapter 11 Cases; provided, that if any party objects to the payment, the Debtors shall not make such payment without further order of the Court.

15. The contents of the Motion satisfy the requirements of Bankruptcy Rules 6003(b) and 6004(a).

16. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Order shall be effective and enforceable immediately upon entry hereof.

17. The Debtors are authorized to take all action necessary to effectuate the relief granted by this Order.

18. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Signed: July 13, 2020.



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

Trade Agreement

_____, 2020

TO: [Critical Vendor]
 [Name]
 [Address]

Trade Agreement

As you may be aware, on July 12, 2020 (the “**Petition Date**”), Hi-Crush Inc., together with certain of its affiliates (collectively, the “**Debtors**”), filed voluntary petitions to commence cases (the “**Bankruptcy Cases**”) under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of Texas (the “**Bankruptcy Court**”). On the Petition Date, we requested the Bankruptcy Court’s authority to pay certain vendors and service providers in recognition of the importance of our relationship with such vendors and service providers. On [_____], 2020, the Bankruptcy Court entered an order (the “**Order**”) authorizing us, under certain conditions, to pay in the ordinary course prepetition claims of certain vendors and service providers that agree to be bound by the terms of the Order and to the terms set forth below. A copy of the Order is enclosed.

To receive payment in the ordinary course on pre-bankruptcy claims, we require you to agree to supply goods and/or services to the Debtors based on “Customary Trade Terms.” Customary Trade Terms are trade terms that are the same or better than the trade terms that existed immediately prior to the Petition Date or, if more favorable, that existed within the sixty-day period prior to the Petition Date.

For purposes of administration of this trade program as authorized by the Bankruptcy Court (the “**Trade Payment Program**”), the Debtors and you agree as follows:

1. For purposes of this Trade Agreement, the estimated balance of your prepetition claim (accounting for any setoffs, credits or discounts) (the “**Prepetition Claim**”) is \$[_____]. The Prepetition Claim will be paid as follows: [_____].
2. The open trade balance or credit line you will extend shall be on normal and customary terms on a historical basis for the period prior to the Petition Date or, if more favorable, within the sixty-day period prior to the Petition Date.
3. In consideration for the payment described herein, you agree not to file or otherwise assert, directly or indirectly, against any or all of the Debtors, their estates, or any of their respective assets or property (real or personal), any lien (a “**Lien**”), a claim for reclamation (a “**Reclamation Claim**”), or a claim under section 503(b)(9) of the Bankruptcy Code (a “**503(b)(9) Claim**”), regardless of the statute or other legal authority upon which such Lien, Reclamation Claim, or 503(b)(9) Claim may be asserted, related in any way to any remaining prepetition amounts allegedly owed to you by the Debtors arising from agreements or other arrangements entered into prior to the Petition Date. Any holders of potential 503(b)(9) Claims reserve all of their rights with respect to such claims until such claims are paid in full.

4. You will hereafter extend to the Debtors all Customary Trade Terms, which are:

[ADD INDIVIDUALIZED SET OF CUSTOMARY TRADE/SERVICE TERMS OR ATTACH/CROSS-REFERENCE TERM FROM EXISTING AGREEMENT]

Payment of your Prepetition Claim in the manner set forth in the Order may occur upon execution of this letter by a duly authorized representative of your company and the return of this letter to the Debtors. Your execution of this letter agreement and the return of the same to the Debtors constitute an agreement by you and the Debtors:

- (a) to the Customary Trade Terms and, subject to the reservations contained in the Order, to the amount of the Prepetition Claim set forth above;
- (b) that, for at least during the pendency of the Bankruptcy Cases, you will continue to supply the Debtors with goods and/or services under the Customary Trade Terms and any terms set forth herein and that the Debtors will pay for such goods and/or services in accordance with the terms hereof;
- (c) that you have reviewed the terms and provisions of the Order and acknowledge that you are bound by such terms;
- (d) that if either the Trade Payment Program or your participation therein terminates as provided in the Order, any payments received by you on account of your Prepetition Claim will be deemed to have been in payment of postpetition obligations owed to you, and the Debtors may take any and all appropriate steps to cause you to repay payments made to you on account of your Prepetition Claim to the extent that such payments exceed the postpetition amounts then owing to you, without giving effect to any rights of setoff, claims, provision for payment of reclamation or trust fund claims, or other defense; and
- (e) that the Debtors reserve all of their rights with respect to such claims.

The Debtors and you also hereby agree that any dispute with respect to this agreement, the Order and/or your participation in the Trade Payment Program shall be determined exclusively by the Bankruptcy Court.

Please indicate your agreement to the terms hereof by returning a signed copy of this letter to [Name] at (____)_____ or [Name] at (____)_____.

Sincerely,

[Debtor]

By:

Its:

Agreed and Accepted by:

[Name of Critical Vendor/Service Provider]

By:

Its:

Dated: