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12 *Proposed Attorney for Official*
13 *Committee of Unsecured Creditors*

FILED
Clerk
District Court
MAY 27 2024
for the Northern Mariana Islands
By 
(Deputy Clerk)

14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE NORTHERN MARIANA ISLANDS**
16 **BANKRUPTCY DIVISION**

17 In re
18 **IMPERIAL PACIFIC INTERNATIONAL**
19 **(CNMI) LLC,**
20
21 Debtor and Debtor in Possession.

CASE NO. 1:24-bk-00002
(Chapter 11)

**COMMITTEE’S OPPOSITION TO
INTERIM APPROVAL OF DIP
FINANCING MOTION**

Hearing Date, Time and Location (ChST):

Date: May 30, 2024
Time: 8:30 a.m.
Location: 3rd Floor Courtroom
1671 Gualo Rai Rd., Gualo Rai
Saipan, MP 96950

Judge: Hon. Ramona V. Manglona

22
23 The Official Committee of General Unsecured Creditors, by and through its proposed
24 counsel, hereby respectfully submits this opposition (the “Opposition”) to the *Motion for Order*
25 *Authorizing Debtor to Obtain Postpetition Secured Indebtedness* [Dkt. No. 12] (the “Motion”).
26 In support of the Opposition, the Committee respectfully represents as follows:
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28



I.

INTRODUCTION

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2
3 According to the Debtor’s recently filed *Schedules of Assets and Liabilities*, the
4 Committee is representing over 160 general unsecured creditors holding approximately \$262.5
5 million in claims, making it by far the largest constituent in this chapter 11 case. As a fiduciary
6 owing the duty of care to such creditors, the Committee objects to the Motion, both on an interim
7 and final basis.

8 As threshold matter, the Committee unequivocally objects to the granting of any priority
9 for funds advanced under the DIP Facility, even on an interim basis. At this early juncture, where
10 the Committee has not been able to investigate the Lender, his motives or his relationship to the
11 Debtor, it is inappropriate to grant this unknown individual any priority for extending credit to
12 the Debtor. Rather, the Committee submits that the DIP Facility must be extended on a general
13 unsecured basis—in equal footing with all general unsecured creditors—so that unsecured
14 creditors are not unnecessarily primed.

15 The Committee also objects to the Debtor’s request for approval of the Proposed Budget
16 attached as Exhibit B to the Motion. While the Committee generally agrees that certain basic
17 operational and administrative expenses can be paid (such as, wages, insurance, utilities, U.S.
18 Trustee fees and professional fees), the Proposed Budget contains questionable line-items giving
19 unfettered authority to the Debtor in drawing down on the DIP Facility and favor certain creditors
20 over others. The most apparent example is the Debtor’s proposal to draw \$6 million on the DIP
21 Facility in June and July 2024 to pay the Commonwealth Casino Commission (“CCC”),
22 notwithstanding the fact that no settlement has been reached between the Debtor and the CCC as
23 to the outstanding license fees.¹ In fact, the CCC says it does not intend to accept the Debtor’s
24 settlement offer. (*See* CCC Opposition, ECF No. 84, at 1.) Therefore, the Committee wholly
25 objects to this iteration of the Proposed Budget, as it is wholly premature.

26
27
28 ¹ The Committee has the right to be heard with respect to any settlement with the CCC. However, before reaching
this point, the Debtor should involve the Committee in all such settlement negotiations and promptly provide the
Committee all documentation related to the underlying debt, and provide a rationale as to why payment of this debt
would in turn benefit the creditor body.

1 II.

2 **BACKGROUND**

3 **A. The Bankruptcy Filing.**

4 The Debtor is a limited liability company organized under the laws of the Commonwealth
5 of the Northern Mariana Islands (“CNMI”). The Debtor obtained its exclusive casino license (the
6 “Casino License”) for the island of Saipan and opened its operations in 2014. The Debtor’s casino
7 is primarily situated on property leased from the Department of Public Land (“DPL”). The
8 COVID-19 Pandemic forced the closure of the Debtor’s operations in March 2020. In April 2021,
9 the Debtor’s Casino License was suspended by the Commonwealth Casino Commission (the
10 “CCC”) for nonpayment of fees and other alleged monetary defaults.

11 On April 19, 2024 (the “Petition Date”), the Debtor filed a voluntary petition under
12 Chapter 11 of the Bankruptcy Code. On May 14, 2024, the Office of the United States Trustee,
13 pursuant to Section 1102 of the Bankruptcy Code, appointed the Committee. The Debtor is
14 continuing to manage its property and operating its business as a debtor-in-possession pursuant
15 to Sections 1107(a) and 1108 of the Bankruptcy Code.

16 **B. The Proposed DIP Facility.**

17 Per the Motion, the Debtor seeks authorization to obtain a \$7 million facility from a Hong
18 Kong-based lender, Loi Lam SIT, with the first interim draw up to \$400,000, (as applicable, the
19 “DIP Facility” and the “Lender”). See DIP Motion, ¶ 8. On May 10, 2024, the Debtor filed the
20 *[Amended] Loan Term Sheet For \$7,000,000 DIP Credit Facility* [Dkt. No. 47-1] (the “Term
21 Sheet”). Among other minor changes, the Term Sheet reflects that the Lender has agreed to extend
22 the DIP Facility on an unsecured, administrative priority basis. Attached as Exhibit B to Dkt.
23 No. 47 is the *[Amended] Loan Term Sheet For \$7,000,000.00 DIP Credit Facility* (the “Loan
24 Agreement”).

1 III.

2 ARGUMENT

3 A. While an Insider Transaction is Not *Per Se* Prohibited, It Must be Subject to Higher
4 Scrutiny.

5 A DIP loan from an insider source is not an ordinary financing arrangement entitled to
6 usual deference of the Debtor’s business judgment. *See Pepper v. Litton*, 308 U.S. 295, 306
7 (1939) (a controlling shareholder is a fiduciary whose “dealings with the corporation are subjected
8 to rigorous scrutiny and where any of their contracts or engagements with the corporation is
9 challenged, the burden is on the . . . shareholder not only to prove good faith of the transaction
10 but also to show its inherent fairness from the viewpoint of the corporation and those interested
11 therein.”).

12 Very little is known about the proposed Lender. Without submitting any evidence or a
13 declaration from Mr. Loi Lam SIT, the Debtor claims in its reply that the Lender is not an insider.
14 Having failed to meet its burden to show otherwise, the proposed DIP Facility warrants
15 heightened scrutiny. “[B]ankruptcy courts do not allow terms in financing arrangements that
16 convert the bankruptcy process from one designed to benefit all creditors to one designed for the
17 unwarranted benefit of the postpetition lender.” *In re Defender Drug Stores*, 145 B.R. 312, 317
18 (B.A.P. 9th Cir. 1992). Courts look to “whether the proposed [post-petition financing] terms
19 would prejudice the powers and rights that the Code confers for the benefit of all creditors, thereby
20 leveraging the chapter 11 process by granting a lender excessive control over the debtor or its
21 assets to the prejudice of other parties in interest.” *In re Berry Good, LLC*, 400 B.R. 741, 747
22 (Bankr. D. Ariz. 2008) (citing *In re Tenney Village Co.*, 104 B.R. 562, 567-70 (Bankr. D.N.H.
23 1989)).

24 Therefore, while the Committee agrees that the DIP Facility is necessary to pay basic
25 operational and administrative expenses, the Court should apply the “heightened scrutiny”
26 standard in evaluating the arguments of the Committee in this Opposition, as well as the issues
27 raised by the Office of the United States Trustee in its supplemental statement.

28

1 **B. Capping the Committee’s Counsel’s Professional Fee Carve-Out to \$150,000**
2 **Unfairly Handicaps the Committee’s Ability to Fulfill its Fiduciary Duties to**
3 **Unsecured Creditors.**

4 While the “carve-out” for Debtor counsel’s fees and expenses is \$350,000, it does not
5 extend the same protection for other professionals, namely, Committee’s counsel, which is capped
6 to merely \$150,000. It is axiomatic that the Committee “shall act as watchdog on behalf of the
7 larger body of creditors which it represents.” See *In re AKF Foods, Inc.*, 36 B.R. 288, 289-90
8 (Bankr. E.D.N.Y. 1984); see also *Off. Comm. of Unsec. Creditors of Cybergenics Corp. v.*
9 *Chinery*, 2003 WL 21231913, at *10 (3d. Cir. 2003) (it is the job of the committee to play “a
10 vibrant and central role in [c]hapter 11 proceedings.”). In order to fulfill its fiduciary obligations
11 to the estate, the Committee’s counsel needs a sufficient carve-out. See *In re Ames Dep’t Stores,*
12 *Inc.*, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) (“[I]t has been the uniform practice in this court . .
13 . to insist on a carve out from a super-priority status and post-petition lien in a reasonable amount
14 designed to provide for payment of the fees of debtor’s and the committees’ counsel and possible
15 trustee’s counsel in order to preserve the adversary system. Absent such protection, the collective
16 rights and expectations of all parties-in-interest are sorely prejudiced.”); see also *In re Twenty Six*
17 *Realty Assoc.*, 1995 WL 170124 (E.D.N.Y. 1995) (same).

18 The Committee must be afforded the resources to investigate and review pre-petition
19 transfers and to analyze the claims of the \$262.5 million estimated unsecured claim pool, and, if
20 appropriate, take action to protect the rights of other unsecured creditors in accordance with its
21 statutory duties. In support, the Office of the United States Trustee, in its supplement statement,
22 shared the same sentiment: “[a]t this juncture in the case, it is premature to limit the “carve-out”
23 for committee fees of \$150,000.” See Dkt. No. 53, pages 9-10.

24 Accordingly, the Committee requests that its professional fee carve-out be increased to at
25 least \$350,000, matching the Debtor’s professional fee care-out, to account for fees and expenses
26 of the Committee’s counsel.

27 **C. The DIP Facility Should Be Extended on an Unsecured, Non-Priority Basis.**

28 The Debtor seeks approval of the DIP Facility under Section 364(b) of the Bankruptcy

1 Code to be allowed as an administrative expense claim. Incurrence of administrative debt is
2 allowed only if the debtor can demonstrate “it is an actual, necessary cost or expense of preserving
3 the estate.” *In re Villalobos*, 2011 WL4485793, at *7 (B.A.P. 9th Cir. 2011) (citing *Club Dev. &*
4 *Mgmt. Corp.*, 27 B.R. 610, 611-12 (B.A.P. 9th Cir. 1982). “An order granted pursuant to § 364(b)
5 must be supported by such a finding.”) *Id.*

6 If the Lender truly trusts that the continued operations and expenses of the Debtor is in
7 the best interest of the estate, it should provide the proposed funding as a general unsecured loan.
8 The Debtor has not made an evidentiary showing that the Lender is a non-insider, and the Lender
9 has not disclosed whether it is an equity holder or a general unsecured creditor, seeking to elevate
10 its priority by entering into this DIP Loan, which is proposed to be paid ahead of all general
11 unsecured creditors, and in equal priority to all administrative claimants, like chapter 11
12 professionals, the Office of the United States Trustee, taxing authorities, etc.

13 Therefore, if the Court is inclined to grant the Motion, the Committee submits that the
14 proposed financing from the Lender should be solely in the form of a general unsecured loan.

15 **D. The Proposed Budget Contains Questionable Items That Must be Scrutinized.**

16 The Debtor asserts in the DIP Motion that “the Budget attached hereto which is identical
17 to the Budget attached as Exhibit “B” to the Cash Collateral Motion ... The Debtor believe that
18 the Budget is reasonable and the DIP Loan will allow the Debtors to pay administrative expenses
19 through July 31, 2024, including any payments to the CCC as a result of any settlement that this
20 Court may approve.” *See* DIP Motion, ¶ 9 (emphasis added).

21 The Committee has not seen that a cash collateral motion has been filed, and it is
22 premature at the interim DIP financing stage to approve all of the line items listed in the budget
23 attached to the Motion as Exhibit B (the “Proposed Budget”).

24 According to the *Declaration of Howyo Cho in Support of Debtor’s First Day Motions*
25 [Dkt. No. 14] (the “First Day Declaration”), the Debtor requires the DIP Facility for the following
26 reasons:

27 The Debtor has had no meaningful income since March, 2020,
28 when it ceased operations due to the Pandemic. During the first
three months of this Chapter 11 case, the Debtor anticipates making
payments for, among other things, operating expenses such as

1 wages and insurance, and Chapter 11 expenses such as US Trustee
2 fees and professional fees. In addition, if the Debtor and CCC are
able to finalize their settlement, the Debtor may also be required to
pay millions of dollars to the Commonwealth.

3 *See* First Day Declaration, ¶ 22.

4 The Committee is cognizant and agrees that those key items listed in the First Day
5 Declaration (wages, utilities, insurance, and the fees of the Office of the United States Trustee
6 and chapter 11 professionals) are necessary to the continued operation of the Debtor. However,
7 the Committee objects to the inclusion of other expense items in the interim DIP budget. The
8 Debtor provides no explanation for why the Proposed Budget seeks authority to pay (i) \$207,000
9 to the landlord, DPL, without explanation as to whether this is for cure of pre-petition arrears or
10 post-petition rent. Further, the Debtor seeks to reserve and to pay \$6,150,000 to the CCC,
11 presumably for delinquent casino license fees, when no settlement has been reached, the CCC
12 says no settlement is imminent (*see* ECF No. 84 at 1) and the Debtor has not involved the
13 Committee at all in any such settlement discussions. Until such time, it is premature to approve
14 this sweeping budget item which takes up the majority of the proposed DIP Facility.

15 Further, the Committee requests that any interim order approving the DIP Facility should
16 require notice to the Committee regarding the ongoing use of DIP funds and depletion of the
17 Proposed Budget so that the Committee may properly fulfill its statutory duties and oversight role
18 in this case.

19 **E. The Loan Agreement Must Be Modified to Comport with Applicable Law.**

20 The Lender seeks repayment of its loan at a simple interest of 10% per annum and an
21 additional 12% interest per annum upon any default, thereby potentially exposing the bankruptcy
22 estate to 22% of interest per annum. *See* Loan Agreement, Section 2.6 (“From and after the
23 occurrence of any Event of Default, the interest rate shall increase by twelve percent (12%) over
24 the interest rate otherwise payable by Borrower hereunder.”).

25 The Loan Agreement is governed by the laws of the Northern Mariana Islands. Under the
26 applicable usury laws, “no action may be maintained in any court of the Commonwealth [...] to
27 recover a higher rate of interest than one percent per month on the balance due on any such
28 contract involving a principal sum of over \$300.” CMC § 5301. Thus, the 22% rate of interest

1 is usurious, barring a showing by the Lender that the loan is exempt, and the interest must be
2 capped to the limit of 12%.

3 Further, under Section 7.1 of the Loan Agreement, any one of the following acts constitute
4 an “Event of Default”:

5 (a)(i) fail to pay or reimburse Lender for any expense reimbursable
6 hereunder or under any other Loan Document within 10 Business
7 Days following Lender’s demand for such reimbursement or
8 payment of expenses.

9 (d) granting of relief from the automatic stay to any creditor with a
10 claim in excess of \$250,000 relief.”

11 (e) “plan of reorganization in a form reasonably acceptable to
12 Lender regarding the treatment of its DIP loan shall not have been
13 filed by Debtor by July1, 2024.

14 (f) such plan of reorganization is not approved by the Court by
15 February 28, 2025.

16 *See* Loan Agreement, Section 7.1 (emphasis added).

17 With respect to the plan filing and confirmation deadlines, it is premature to lock in such
18 a process, particularly at the interim DIP financing stage. The Lender is requiring the Debtor to
19 file a plan within 5-weeks from the interim hearing on this DIP Motion, in an effort to fast track
20 a Lender-sponsored plan, while assuring that the Committee lacks the time and the budget (due
21 to its limited carve-out) to conduct a thorough investigation or explore alternative exit strategies.

22 As the Court is aware, there is a pending contested motion for relief from stay filed by
23 Joshua Gray and U.S.A. Fanter [Dkt. No. 48], which concerns judgment claims greater than
24 \$250,000. Thus, if the DIP Facility were to be approved as-is, granting of relief from stay (which
25 the Committee has opposed) would immediately trigger an Event of Default permitting the Lender
26 to charge interest at 22%, and “declare all principal of and accrued interest on the Loan and all
27 other Obligations to be immediately due and payable” under Section 7.2 thereof, thereby
28 enlarging an already significant administrative expense claim, and allowing the Lender to gain
significant leverage over the estate’s remaining creditors.

Lastly, the governing law provision of the Loan Agreement should expressly state that it
shall be governed by and interpreted under the United States Bankruptcy Code, the Federal Rules
of Bankruptcy Procedure, *and where appropriate*, the laws of the State of Commonwealth of
Northern Mariana Islands . *See* Loan Agreement, Section 8.4.

1 Based on the foregoing, the Committee requests that (i) the default provisions sub-sections
2 (a)(1), (d), (e), and (f) of Section 7.1 be removed in their entirety, (ii) that interest be capped at
3 12%, and (iii) the governing law provision be modified to include the applicability of the
4 Bankruptcy Code and the Bankruptcy Rules.

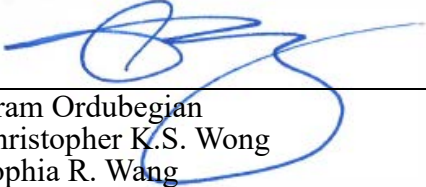
5 **IV.**

6 **CONCLUSION**

7 Based upon all of the foregoing, the Committee respectfully requests that unless the DIP
8 Facility, Loan Agreement, and the Proposed Budget are amended by deleting and modifying the
9 objectionable provisions and line-items, as set forth herein, the Court must deny the interim
10 approval of the Motion.

11 Respectfully submitted this 26th day of May, 2024.

12 **ARENTFOX SCHIFF LLP**

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15 _____
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19 *Proposed Attorneys for the Official Committee of*
20 *General Unsecured Creditors*
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